Addy Mechanical Fabricators and Constructors, Inc. ***and*** **Local No. 242, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO.** Cases 19-CA-11087, 19-CA-11088, 19-CA-11158, 19-CA-11235, 19-CA-11236, and 19-CA-11256

August 14, 1981

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND ZIMMERMAN

On February 11, 1981, Administrative Law Judge Maurice M. Miller issued the attached Decision in this proceeding. Thereafter, counsel for the Respondent filed exceptions and a supporting brief, and counsel for the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order,[2] as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Addy Mechanical Fabricators and Constructors, Inc., Addy, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraph 1(b) of the recommended Order and insert the following as paragraphs 1(b), (c), and (d):

"(b) Questioning employees with regard to their union sympathies, their personal participation in some union campaign for designation or selection as their representative for collective-bargaining purposes, or their knowledge of union sympathies demonstrated, or prounion statements or conduct manifested, by their fellow employees.

"(c) Threatening to shut down its shop facility, or discharge its employees, because Local No. 242, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, or any other labor organization, may have been designated or selected as their representative for collective-bargaining purposes.

"(d) In any like or related manner interfering with, restraining, or coercing employees in their exercise of the rights guaranteed by Section 7 of the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discharge employees or discriminate in any other manner with regard to their hire or tenure of employment, or any term or condition of their employment, because of their known or suspected participation in campaigns for representative status by Local No. 242, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, or any other labor organization, or because of their participation in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

WE WILL NOT question employees with regard to their union sympathies, their personal participation in some union campaign for designation or selection as their representative for collective-bargaining purposes, or their knowledge of union sympathies demonstrated or prounion statements or conduct manifested by their fellow employees.

[1] The Respondent asserts that the Administrative Law Judge manifested bias and hostility towards it by crediting only the General Counsel's witnesses and by ignoring relevant and credible testimonial and documentary evidence. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. We also find totally without merit the Respondent's allegation of bias and prejudice on the part of the Administrative Law Judge. Upon our full consideration of the record, we perceive no evidence that the Administrative Law Judge prejudged the case, made prejudicial rulings, ignored any evidence, or demonstrated a bias against the Respondent in his analysis or discussion of the evidence.

[2] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

WE WILL NOT threaten to shut down our shop facility, or discharge our workmen, because Local No. 242, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, or any other labor organization, may have been designated or selected as their representative for collective-bargaining purposes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in their exercise of the rights guaranteed by Section 7 of the Act.

WE WILL offer Jose Fierro and Duane Decker immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority rights or other rights and privileges.

WE WILL make whole Jose Fierro and Duane Decker for any pay losses, plus interest, which they may have suffered, or may suffer, because of their discriminatory discharges.

ADDY MECHANICAL FABRICATORS AND CONSTRUCTORS, INC.

DECISION

STATEMENT OF THE CASE

MAURICE M. MILLER, Administrative Law Judge: Upon successive charges filed on various dates between February 5 and April 2, 1979, and duly served, the General Counsel of the National Labor Relations Board caused a consolidated amended complaint and notice of hearing dated May 9, 1979, to be issued and served on Addy Mechanical Fabricators and Constructors, Inc., designated as Respondent within this Decision. Therein, Respondent was charged with the commission of unfair labor practices within the meaning of Section 8(a)(3) and (1) of the National Labor Relations Act. 61 Stat. 136, 73 Stat. 519, 88 Stat. 395. Within Respondent's answer, duly filed, the firm's counsel conceded the correctness of certain factual matters set forth in the General Counsel's consolidated amended complaint, denied the commission of charged unfair labor practices, and set forth certain affirmative defenses.

Pursuant to notice, a hearing with respect to this matter was held on October 16 and 17, 1979, in Spokane, Washington, before me. The General Counsel and Respondent were represented by counsel. Each party was afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence with respect to pertinent matters. Since the hearing's close, briefs have been received from the General Counsel's representative and Respondent's counsel; these briefs have been duly considered.

FINDINGS OF FACT

Upon the entire testimonial record, documentary evidence received, and observation of the witnesses, I make the following:

FINDING OF FACT

I. JURISDICTION

Respondent raises no question herein with respect to the General Counsel's present jurisdictional claims. Upon the consolidated amended complaint's relevant factual declarations—more particularly, those set forth in detail within the second paragraph thereof—which Respondent's counsel concedes to be correct, and on which I rely, I conclude that Respondent herein was, throughout the period with which this case is concerned, and remains, an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in business activities affecting commerce within the meaning of Section 2(6) and (7) of the statute. Further, with due regard for presently applicable jurisdictional standards, I find assertion of the Board's jurisdiction in this case warranted and necessary to effectuate statutory objectives.

II. THE UNION

Local No. 242, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, designated as the Union within this Decision, is a labor organization within the meaning of Section 2(5) of the Act, as amended, which admits certain of Respondent's employees to membership.

III. UNFAIR LABOR PRACTICES

A. *Issues*

This case presents several positions with respect to Respondent's course of conduct when confronted with the labor organization's campaign for representation rights. Those questions, for present purposes, may be summarized as follows:

1. Whether the firm, through its general manager, questioned employees, threatened them, and created an impression of surveillance, with respect to their participation in the Union's representation campaign, or with respect to their participation in concerted activities statutorily protected.

2. Whether Jose Fierro and Duane Decker, designated as Respondent's working foremen, were terminated because of their union activities, or protected concerted activities.

3. Whether Fierro and Decker were supervisors, within the meaning of Section 2(11) of the statute, when Respondent terminated their services.

4. Whether, subsequently, Respondent laid off Dean Fairall, John Galvin, Marcus Ross, and Gary Yardley, because of their union activities, or because of their participation in concerted activities statutorily protected.

Respondent denies any managerial responsibility for statutorily proscribed interrogation, threats, or sugges-

tions of surveillance. The firm contends, further, that Fierro and Decker were statutory supervisors, whose terminations, therefore, would not warrant Board consideration. With respect to Fairall's termination, plus the layoffs and subsequent terminations of Galvin, Ross, and Yardley, Respondent pleads differentiated business justifications.

B. *Facts*

1. Background

a. *Respondent's business*

Respondent, functioning as a State of Washington corporation, engages in the fabrication, refabrication, repair, and maintenance of moveable or fixed industrial equipment and plant components. It maintains its principal office and shop facilities in Addy, Washington, about 50 miles from Spokane, northwesterly.[1]

Throughout the period with which this case is concerned, Robert J. LeCount has served as Respondent's president. Prior to December 1979, the firm's day-to-day operations have been maintained subject to the direction of Don Robbins, Respondent's general manager. Sometime during the month designated, however, Bernard "Skip" Hillyer was designated as Robbins' replacement.

During a mid-year 7-month period, within calendar year 1978 specifically, most of Respondent's gross revenues had been derived from services provided for Chewelah Contractors, Inc., a construction firm headquartered nearby, wholly owned by Respondent's president. Throughout the period with which this case is concerned, however, the firm's second largest customer was Northwest Alloys, Incorporated; that firm operated a magnesium reduction plant, likewise located within Addy, Washington's vicinity.

During calendar year 1978–79's winter months, Respondent's crew complement encompassed some 13 to 17 welders, mechanics, helpers, fabricators, cleaners, and janitors. Whenever current business projects might warrant, Respondent would maintain both shop crew and field crew. The necessity for a field crew, however, would depend on field work's availability and weather conditions.[2]

Both crews, when required, were led by so-called working foremen. Whenever the field crew's services were not required, however, the crewmembers, normally three in number—together with their working field foreman—would be recalled for shop work; they would serve as regular shop crewmembers, led by the firm's working shop foreman.

b. *Respondent's contract projects*

Between August 1978 and December of that year, Respondent completed field work on two contract projects.

At Sara May Lumber Company, Respondent's field crew rebuilt a sawmill conveyor system and mounted some sawmill equipment. The work had been started during August 1978. While it was in progress, presumably, Respondent started a second project on September 10 providing fabrication and erection work in connection with a water tank's installation at Inchelium, Washington; that project was completed during October 1978 so far as the record shows. The firm's Sara May Lumber Company project was completed during December, hereafter.[3]

Concurrently, Respondent's shop crew worked, so far as the record shows, on four fabrication projects.

During November 1978, the firm had commenced work on three projects for Northwest Alloys, more or less simultaneously. Some "tapping" carts—their number never specified for the record—were fabricated; this project was ultimately completed during April 1979. Concurrently, Respondent likewise fabricated a duct system, within a 2-month period, for NWA; that system—though completed and delivered—was, however, subsequently rejected. Finally, Northwest Alloys granted Respondent a presumptively temporary November contract to clean metal "traps" and related equipment which were currently being utilized, within the designated firm's plant, and to catch slag, principally magnesium oxide, produced in connection with its magnesium reduction process. Respondent's final trap cleaning services were provided sometime during April 1979; the circumstances surrounding that particular project's termination will be discussed further within this Decision.

Late in December 1978, Respondent contracted to fabricate a "Barker In Feed Roll Case" for Boise Cascade Corporation. Work on this project was completed by January 10, 1979, according to Respondent's record.

The firm contends, herein, that these several projects—save for the previously mentioned "trap cleaning" services for Northwest Alloys, which were provided pursuant to a cost-plus contract—suffered cost overruns and lost money. This contention, so far as it may bear upon Respondent's claimed business justification for conduct which the General Counsel challenges, herein, will be considered subsequently, within this Decision.

c. *Union's representation petition*

During late December 1978 and early January 1979 the Union conducted a campaign to organize Respondent's employees. *Inter alia*, Shop Foreman Jose Fierro signed a union designation card on January 8; previously January 2 Duane Decker, who prior to his December 1978 shop assignment had served as Respondent's working field foreman, had signed such a designation card.[4]

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[1] The following factual determinations with regard to Respondent's business derives, partially, from the Regional Director's findings—within a Decision and Direction of Election, with respect to Case 19-CA-9168, discussed hereinafter—which I have officially noticed. Other determinations derive from the record herein.

[2] Contracts which required field work would normally decline or run out during the winter months.

[3] Respondent's services with respect to the Inchelium project had been provided pursuant to a subcontract with Chewalah Contractors, Inc., which had done the foundational work.

[4] Decker, together with his field crew fellows, had been transferred into Respondent's shop, following the December 1978 completion of the firm's Sara May Lumber Company project. When he signed the Union's card, Decker was serving on Respondent's regular shop crew without recognized "foreman" status.

Decker had, thereafter, spoken with fellow workers concerning the Union, had advised them of their right to pursue self-organization, and had conducted some union organization meetings at his residence.

On Friday, January 12, 1979, the Union filed a representation petition (Case 19-RC-9157) seeking certification within a unit of Respondent's production and maintenance employees, save for conventionally excluded categories.[5]

Shortly after January 12, however, the Union's petition was withdrawn. The record suggests that the Union's secretary may have withdrawn it because of comments proffered by a Board representative, that the organization's card showing might conceivably be considered tainted because putative "supervisors" had participated in the Union's organizational campaign. On Wednesday, January 24, the Union filed a second petition (Case 9-RC-9168) seeking certification within the bargaining unit previously designated.

2. Respondent's reaction to the Union's campaign and representation petition

a. *Interrogation and threats*

Meanwhile, on Monday morning, January 15, directly following Hillyer's personal receipt of the Union's first recognition demand—previously noted—the firm's general manager had questioned Fierro with respect to whether he "knew anything" regarding the Union's representation claim. Fierro had denied any such knowledge.[6]

Respondent's general manager—whom Fierro credibly characterized as visibly "upset and angry" during their conversation—had proceeded to declare, then, that he would find out who had distributed the Union's designation cards.[7]

When Hillyer had shortly thereafter shown Fierro the Union's recognition demand, the latter had queried him with regard to what his reaction would be. Respondent's general manager had, so I find, declared that he would just "close the gates" for 30 days until everything cooled off, and that, should it prove necessary, Respondent's workers would "all" be discharged. Hillyer had finally reiterated his determination to discover who had distributed union authorization cards, and who had signed them.[8]

While a witness, Hillyer further conceded—substantially in conformity with Fierro's testimony—that he had, indeed, questioned two shop workers with regard to their knowledge of the Union's campaign and their personal participation therein.

Specifically, Respondent's general manager testified, during direct examination, that he had queried employee Bryan Byrd with regard to the Union's campaign. Hillyer conceded that Byrd had been asked how long it had been going on; that the worker had, responsively, reported the campaign had been "going on" for about 3 weeks; and that Byrd, when questioned further, had reported Fierro's knowledge specifically with regard to the Union's bid for representative status.[9]

With due regard for testimonial recollections credibly proffered by Fierro and Ronald Gates, who had been a welder-fitter in Respondent's hire—which Hillyer, while a witness herein, did not categorically contradict—I find further that Respondent's general manager, during their January 15 conversation, had questioned Byrd specifically with regard to whether he had signed a union designation card; Byrd, as the record persuasively shows, had replied affirmatively. I so find.

Hillyer testified, cumulatively, that he had "checked" the situation, further, by questioning another shop worker—never designated, for the present record, by name—whom he considered a very "religious" man who would not lie. The general manager testimonially conceded that he had asked the second worker whether he had signed a card; that the worker had responded affirmatively, declaring, further, that "everybody" had signed; and that he had, like Byrd, reported—when ques-

[5] Previously, within a letter dated Tuesday, January 9, the Union's secretary, Lynn Rawlins, had undertaken to notify Respondent that a majority of the firm's production and maintenance workers had selected the Union as their collective-bargaining representative. Rawlins had requested recognition and suggested the commencement of contract negotiations. Further, he had suggested the Union's willingness to submit signed "authorization and membership" cards for a neutral party's card check, should Respondent doubt the organization's majority representative claims. For reasons never made clear, within the present record, the Union's letter does not appear to have come to General Manager Hillyer's notice until Monday, January 15; Hillyer's reaction will be noted hereinafter.

[6] While a witness, herein, Fierro so testified. When summoned in Respondent's behalf, Hillyer conceded the correctness of Fierro's testimonial recital. With respect to Fierro's further testimony regarding his reactions, Respondent's general manager has likewise proffered several corroborative concessions; concurrently, however, his testimony reflects some denials. With due regard for the record, considered in totality - buttressed by my observations with respect to Hillyer's witness chair demeanor, and considerations of logical probability - I have found Fierro's testimonial recapitulations generally worthy of credence.

[7] While a witness, Hillyer conceded that his information with regard to the Union's claim - which had come "like a bolt out of the blue" so far as he was concerned - had left him "up in the air" with respect thereto. I conclude, consistently with the General Counsel's contention that, directly following his receipt of the Union's letter, the general manager's reactions had, indeed, reflected both tension and discombobulation.

[8] When cross-examined herein, Hillyer testimonially denied that he had specifically threatened to "close [Respondent's] gates" for 30 days. However, he could only approximate his responsive comments, "give or take a word here and there." Respondent's general manager declared that he had merely referred to what employers confronted with a union campaign would have done 50 or 60 years previously; more particularly, Hillyer had commented - so he testified—that such employers would have, then, shut down their facilities for "about" 30 days and fired everybody. The general manager, however, conceded—testimonially—that he had further declared that Respondent would not have to worry about its reaction, since "the way it stands now, if [Respondent] does go union, I'll only be open thirty days anyway." Within its context, I find, Hillyer's purported comment, had it been made, would have been reasonably calculated to convey his belief—*not based on objective data, so far as the record shows*- that, should Respondent's workers choose union representation, the firm's customers would learn about that development, withdraw their patronage, and thereby dictate Respondent's closure. Whatever the general manager's purported remark, taken at face value, could be considered a statutorily proscribed threat, *without regard for Fierro's claimed differential recollection—which I have, herein, credited—that Respondent's managerial representation had, rather, proclaimed his firm's prospective reaction somewhat more forthrightly*, will be considered, subsequently, within this Decision.

[9] When questioned by Hillyer, Byrd had been a rank-and-file welder in Respondent's shop. Within a week after Fierro's termination - which will be discussed subsequently within this Decision - Byrd had been designated shop foreman, as Fierro's replacement. When this case was heard, however, Byrd was functioning as Respondent's field foreman.

tioned—that Fierro had known about the Union's campaign from the start.

The record herein—within my view—warrants determinations, further, that Hillyer had similarly questioned welder-fitter Gates, welder Dean Fairall, and trap cleaners John Galvin, Gary Yardley, and Marcus Ross with respect to whether they had signed union designation cards; that Fairall and Galvin had been queried, preliminarily, with respect to whether they knew "anything" with regard to the Union's bid for representative status; and that Fairall had further been asked whether he knew who had started the "union" talk.[10]

The workers questioned, I find, disclaimed any knowledge with respect to the subject matter of Hillyer's interrogation; *inter alia*, they denied signing union designation cards.

b. *The discharge of Fierro and Decker*

1. Jose Fierro

Shortly following his January 15 round of interrogation, noted, Hillyer summoned Fierro to his office. The shop foreman was told that he was through; he was directed to collect his tools. When queried regarding his reason, the general manager replied—as Fierro testified—that a good "reliable" source had told him that the shop foreman had been distributing union designation cards. Fierro denied the charge; his disclaimer was rejected.[11]

Shortly thereafter, Hillyer handed Fierro his final paycheck, together with a termination slip. The slip provided no statement, however, with respect to Respondent's rationale for the shop foreman's discharge. When the shop foreman requested a statement of Respondent's reasons, so that he would have no trouble with his state unemployment compensation claim, the general manager declared—so I find—that Respondent was not required to provide one. Fierro then left.

The shop foreman then drove to Duane Decker's home—located in Colville, Washington, some 14 miles distant—where he requested information regarding the location of the State of Washington Employment Security Department's local facility. Decker volunteered—though he may have been requested—to go there with Fierro; they left for the state office together—so I find—with Fierro driving his pickup truck.[12]

Fierro had told Decker, upon reaching his fellow worker's residence, that he had been discharged for passing out union cards. When filing his claim for unemployment compensation, thereafter, the shop foreman had consistently reported—while personally filling out the state form which would be sent to Respondent, notifying the firm with regard to his claim—that he had been terminated for that stated reason.

Later that morning, January 15, directly following their departure from the employment security department's Colville facility, Fierro and Decker, while riding in Fierro's truck, had been seen by Hillyer, who was then fortuitously driving a vehicle down the same street, headed in the opposite direction. According to Fierro, whose testimony Decker generally corroborated, Respondent's general manager had given them a noticeably resentful stare.

2. Duane Decker

On Tuesday morning, January 16, Decker reported for work. He had been transported to Respondent's facility, from his Colville, Washington, residence, by Phil Hollabough, a fellow worker.[13]

General Manager Hillyer, whom they encountered when they reached Respondent's shop door, told Decker—so I find—to pick up his tools and leave. Decker testified that when queried with respect to his reason. Hillyer replied, "I told you, no damn Union." When the general manager, then, proceeded up the shop stairs to his office, Decker followed.[14]

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[10] These determinations derive from testimony proffered by Gates, Fairall, Galvin, and Yardley, which I credit. While a witness, Hillyer could not "really" recall whether he had questioned Gates; he thought that he had done so, but could not testify positively. The general manager denied questioning Galvin, Yardley, and Ross, but was never asked, specifically, whether he had queried Fairall as charged. Upon this record, with due regard for Hillyer's testimonial concessions previously noted, his denials with respect to challenged interrogation—within my view—merit no credence.

[11] Summoned as Respondent's witness, Hillyer claimed that he had not mentioned union cards, but that Fierro had, rather, asked whether he was being dismissed for supposedly passing out that organization's designation cards. The general manager's direct testimony further reflects two divergent narratives with respect to their further conversation. Initially, he testified that Fierro had been told his discharge was "partly" due to his union involvement; Hillyer claimed, testimonially, that his comment had been *intended to* suggest that Fierro's termination had been "partly" bottomed upon his presumptively "lying" disclaimer, regarding his nonparticipation in the Union's card distribution. Subsequently, the general manager testified that—when confronted with Fierro's purportedly challenging query—he had merely declared his desire that the subject be dropped. With matters in this posture, I have found Fierro's proffered recollections more worthy of credence.

[12] Decker had not, earlier, reported for work that day. Early that morning, he had started his trip to work, using his personal truck—which he "usually" employed for that purpose—but had discovered that the truck's brakes were inoperative. By that time—so Decker's credible, unchallenged testimony shows—it was too late for him to request transportation to work, alternatively, from any fellow worker. He had, therefore, telephoned Respondent's shop and reported his situation to Respondent's secretary, following which he had driven his truck—"very carefully"—to a local Colville, Washington, service station, for required repairs. Upon returning home, ferried by his wife, Decker had reported his situation directly to Respondent's general manager, who had signified his acquiescence. Hillyer had then queried him—so Decker testified—with respect to whether he had signed a union card; he had responded negatively. Shortly following their conversation's conclusion, Fierro had arrived and reported his discharge.

[13] While a witness, Decker testified that he had "picked up" his truck, from the service station repair shop to which he had previously taken it, at 5:30 p.m. the previous day. His reliance on Hollabough, nevertheless, for transportation to work on January 16, particularly, has not been explained for the present record, though his credible testimony reveals that he had "sometimes" ridden to work, with Hollabough, previously.

[14] Summoned as the General Counsel's witness, Hollabough recalled this conversation somewhat differently. He testified that Hillyer had first declared he wanted to see Decker upstairs; that, while both men were going up the stairs, the general manager had said "something" which he [Hollabough] could not hear; and that Decker had, then, asked, "Is this because of the Union?" Hillyer, according to Hollabough, had responded affirmatively. With due regard for the record herein, considered in its totality, I find the divergences between Decker's and Hollabough's witness chair recollections insufficient to warrant this Board's rejection of their testimony's purport, generally. I remain satisfied—and I find—that Hillyer had greeted Decker with word that he was being discharged, and

Continued

Following some comments, calculated to suggest that he considered himself "stabbed in the back" by Decker's conduct, Hillyer, so I find, gave the latter his termination notice. It indicated that Decker was being discharged for "excessive absenteeism" and because he was considered unreliable.

When Decker left the general manager's office—so his testimony, which I credit, shows—he was followed by Hillyer, who watched him gather his tools and walked with him to Respondent's shop door. Several of Respondent's shop employees, who had reported for work were standing nearby. As he passed them, with Hillyer close behind him, Decker—so I find—declared:

> "Look out guys, Hillyer is going to fire everybody in the place until he gets the right man."

Hollabough, who had driven Decker to work, was one of those standing nearby. His corroborated testimony with respect to what happened then, which I credit, warrants a determination—which I make—that Hillyer responsively nodded his head, glanced around, and favored those present with "nasty" looks. With matters in this posture, Decker left Respondent's premises.

My determinations, herein, regarding the circumstances which led to Decker's discharge, derive primarily from his credible testimony—previously noted—which both Fierro and Hollabaugh have tangentially or directly corroborated.

Confronted with the General Counsel's testimonial and documentary presentation, Hillyer did proffer a significantly divergent recital. He testified: that, early on Monday, January 15, Respondent's secretary had given him a message regarding Decker's prior telephone report: that he was having trouble with his pickup truck and would not be in; that, following Fierro's discharge, he had telephoned Decker's residence to determine his availability for service as Fierro's replacement; that Decker's minor daughter had reported her father's earlier departure for downtown Colville, driving his truck; that, later that morning, while Hillyer was driving in Colville on Respondent's business, he had seen a truck, *which he believed to be Decker's*, parked before a tavern which Decker was known to frequent; and that, shortly after noon, he had seen Fierro and Decker, heading south, riding in Fierro's pickup truck.

With respect to the January 16 development, then Respondent's general manager declared that, when Decker reported, he, Hillyer, was "ready to go to war" with him. His testimony, with regard to their conversation, reads, in relevant part, as follows:

> I asked him, "How come you couldn't get in yesterday, but you could ride around with Joe [Fierro]?" He said, "I had some things I had to do." One thing led to another and I told him, "I told you before," you know, "I'm dissatisfied with your work," and a few things, and "I'm just going to let you go, and get a shop foreman or someone I can depend on." And he said something, "Is it over this union?" And I told him, "Don't blame it on the union, Duke," you know, "Don't blame all your faults on something else. We don't even have a damn union here." And he got all huffy and he stopped at the door and said, "I suppose you're going to fire everybody until you get the union people." I said, "Duke, I'm just trying to run a business. I don't give a damn about what's going on. I'm not interested in a union thing. I don't even know if its real or somebody's idea of a joke or what the hell it is yet." And he said, "Well, I suppose you'll fire everybody till you get the right people," and he stomped on downstairs and got his toolbox and left.

Respondent's general manager denied that he had followed Decker downstairs, and denied—further—that he had heard, or reacted to, any comments which Decker might have directed to his fellow workers, while making his departure. When queried with regard to Decker's testimony that, during their office conversation, he had—tangentially—declared he would not suffer being "stabbed in the back" more than once, Hillyer contended: First, that his comment had been made during a conversation, several days later, when Decker visited Respondent's facility; and, secondly, that he, Hillyer, had, then, characterized Decker's record of poor workmanship, and excessive time spent on projects, as "stabbing [him] in the back" which would not be tolerated.

Hillyer's proffered recollections, with respect to Decker's termination, merit no credence—within my view—for several reasons.

First: The general manager's present claim—purportedly communicated to Decker when he was terminated, and subsequently reiterated, when he Hillyer, testified herein—that Respondent's former field foreman had, *previously*, been criticized for unsatisfactory work performance and/or excessive absenteeism, lacks persuasive record support. While witness, herein, Hillyer discussed Decker's absence record; his testimony with respect to the former field foreman's termination, however, reflects no recollection that these subjects had been conversationally canvassed then or previously. Respondent's general manager recalled December 1978 discussions with Decker, regarding two field projects; he testified, however, that—with respect to Respondent's previously completed Inchelium tank job—no "criticism" had been involved. Though he recalled conversational references to customer complaints—from Sara May Lumber Company's spokesmen—regarding the purported failure of Respondent's crew, there, to work full time or provide efficient performance, he conceded, testimonially, that he had spoken to Decker when that project was close to completion; Hillyer's testimony with respect thereto warrants determination, which I make, that his comments had merely been cautionary. When questioned by a State of Washington Employment Security Department representative, subsequently, with regard to Decker's postdischarge unemployment compensation claim, Respondent's spokesman "indicated" that he, Decker, had not been

that, when queried with respect to his reasons, Respondent's general manager had cited the Union's bid for representative status.

warned, previously, about absenteeism or that he had not been considered a reliable employee.[15]

With matters in this posture, I am satisfied that Respondent's references to "excessive absenteeism" and Decker's purported "unreliability" set forth within his termination notice were calculated, merely, to provide some pretextual justifications for his termination.

Second: President LeCount's testimony reveals that Hillyer told him—subsequent to Decker's termination—that Respondent's former field foreman had been discharged, specifically, because he had "lied" about his truck's brake problem, because of his subsequent January 15 conduct, and because he could not be reached, on that date, when he was "really" needed. Upon this record, determinations have been made, however, that Decker did fail to report for work, on January 15, for a valid reason, because he lacked transportation; Hillyer's purported conclusion that Decker's excuse had been pretextual and merited rejection as factitious could only have been derived from speculation, without sufficient "objective" warrant.[16]

With due regard for the record, considered in its totality, determinations would seem warranted, therefore, that Hillyer considered Decker's conduct disturbing, primarily because he was seen in Fierro's company—shortly following the shop foreman's discharge purportedly for distributing union designation cards—and that it was *this* facet of their January 15 eye-to-eye contact which generated the general manager's termination decision.

Third: Hillyer's testimony, that he charged Decker with "stabbing [him] in the back" merely because of his purportedly poor work performance, struck me as contrived; within my view, such strongly worded charges would not normally be made when workers have allegedly been terminated for some purportedly perceived lack of competence, solely.

Fourth: Credible testimony, proffered for the record, warrants determinations, which I make, that Hillyer was still exercised and disturbed, because of the Union's representation claims, *both on January 16* and thereafter, subsequent to Decker's discharge. Employee Fairall recalled, credibly, that Respondent's general manager had, again, queried him on January 16 with regard to who had started the union campaign; that he had, again, declared he would discharge those workers who had signed union authorization cards; and that he would "probably" have to shut down Respondent's facility for 30 days and hire a completely new crew. Employee Yardley testified—credibly and without persuasive contradiction—that, some "one or two" days subsequent to Fierro's and Decker's discharges, Hillyer told him they had been "relieved" for organizing the Union; Hillyer's putative denial that he had made such a statement merely compassed a general negation, proffered in response to a leading question, broadly phrased. Finally, Decker testified, credibly, that some 2 weeks subsequent to his discharge, during a visit to Respondent's shop, he had asked Hillyer why the latter was taking "this Union thing" personally; and that Respondent's manager had protested he was not taking it personally, but was merely trying to shield himself from possible criticism.

With matters in this posture, Hillyer's proffered version, with regard to the circumstances which had precipitated Decker's termination—within my view—merits Board rejection.

c. *Fairall's layoff*

Dean Fairall, who had been hired for work as a combination welder and fabricator some 7 months previously, was laid off on Friday, February 2, 1979, Respondent's payday, purportedly for lack of work. He was given a termination notice which stated that he had been laid off, pursuant to a reduction in force, for the reason noted above. Hillyer told him—so he testified—that he was being released because Respondent needed to retain its welders.

When queried further, regarding the circumstances of his layoff, Fairall testified that, while in Respondent's toolroom some 2 or 3 days previously, before work started, he had—while Wendy Conover, Respondent's secretary, was present, but some 15 feet distant—removed a business card, bearing the name of the Union's representative from his wallet which he had verbally described and concurrently "flashed" while commenting:

> that it would be a good joke to play on Skip [Hillyer] to leave it where he could find it, and then not tell him where it came from. . . .

He had then, so he testified, put the card back in his wallet; he, however, had done nothing with it. Fairall declared that subsequently—but before his layoff—he had been told by Bryan Byrd, then Respondent's shop foreman, that Hillyer had learned about the business card joke, and was very "upset" about the matter.

When cross-examined, the welder-fabricator testified that Respondent's secretary had voluntarily told him—when he was subsequently laid off—that she had never reported his prior "business card" comments to Respondent's manager; when queried further, however, Fairall claimed that she conceded she had recounted the incident to Mack Lamb, President LeCount's brother-in-law, who was then a Chewelah Contractors, Inc., employee.

With respect to Fairall's layoff, the General Counsel's representative has, further, proffered testimony that, several days after the welder fabricator's departure, when queried with regard to Fairall's layoff, Bryan Byrd told

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[15] This finding rests on a factual summary report, with regard to Respondent's position relative to Decker's claim, prepared by the employment security department representative, and set forth within that department's formal "Determination Notice" regarding that claim. That document was proffered and received for the record without objection. Within my view, it constitutes a trustworthy public "report" with regard to Respondent's concession, despite its nominal hearsay character. See Fed. R. of Evid., Rule 803(8)(c) in this connection.

[16] The statement by Decker's daughter, that he had "driven" his truck downtown—which had, allegedly, persuaded Hillyer that Respondent's former field foreman had "lied" to Respondent's secretary, and would fail to report for work for some nonjustifiable reason—was not inconsistent with Decker's claim that he had "very carefully" driven his truck to a Colville service station. And Hillyer's testimonial contention, that he had subsequently seen *Decker's* truck, midmorning, parked near a tavern, has been—within my view—persuasively undercut within the present record. His presumptive *post hoc* contention—further—that Decker's truck could have been repaired and released within a short period of time, set forth first by Respondent's counsel, within his brief, reflects speculation merely.

several of Respondent's workers that he "thought" Fairall had "waved" his union card before the wrong people; while commenting, further, that—because of the Union's campaign in progress—the firm's workers should be careful about what they said, and to whom, since, if they were not careful they might be sent "down the road" also. While a witness, Decker testified further that, during his subsequent visit to Respondent's shop, previously noted, Byrd had reported Fairall's layoff, while commenting that the welder-fabricator had flashed the Union's card in Conover's office, that "someone" had seen it, and that he had, therefore, been laid off so that his "attitude" could be checked.

Upon this record, the General Counsel's representative seeks a determination that Fairall was laid off "primarily" because he had flashed the Union's business card while at work.

Confronted with the General Counsel's presentation, summarized herein, Respondent has proffered Hillyer's countervailing testimony, buttressed by Byrd's testimony and some documentary evidence, calculated to warrant determinations that, by February 2, Respondent's shop work was running low; that there was little work for fabricators, though some welding work was available; that Fairall, though qualified for welding work, had been doing fabrication work primarily; that he was not considered a good welder; that Byrd had submitted a list of qualified welders whom Respondent should retain; that Fairall, though considered a promising fabricator, had not been listed for retention; and that he—together with "two or three other people"—had, therefore, been given February 2 layoffs. Respondent proffers no contention that the card flashing incident relied on by the General Counsel's representative did not occur.[17]

The firm seeks a determination, nevertheless, that Fairall's layoff should not be considered motivated by his presumptive display of union sympathies. Within its context, Respondent contends that the welder-fabricator's layoff was consummated for purely business reasons.

With matters in this posture, two questions are presented. *First*: Has the General Counsel's representative demonstrated, *prima facie*, that Fairall's presumptively protected conduct was a cognizable "motivating factor" which should be considered "causally related" to Respondent's February 2 layoff decision, so far as he was concerned? *Second*: If so, has Respondent, nevertheless, shown persuasively that the welder-fabricator's layoff would have been consummated, and was in fact consummated, without regard for his protected conduct? See *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), in this connection. These questions will be considered, subsequently, within this Decision.

3. The representation election

Within a letter dispatched to Respondent's production and maintenance workers on March 12, President LeCount and Respondent's manager discussed the possible consequences, should the Union win designation as the employee collective-bargaining representative. *Inter alia*, Respondent's workers were told, so the General Counsel's representative notes, that "only about one fourth" of the firm's work was normal Boilermakers Union work, and that, should the firm become contractually bound with that organization, other unions, on big jobs, would insist on doing most of the work.

Thereafter, during a company meeting held in Respondent's shop, with President LeCount, Hillyer, Shop Foreman Byrd, and Respondent's counsel present, "representing" management, the firm's workers were told, *inter alia*, that, with respect to secret-ballot elections held in small shops like Respondent's shop, there was a chance that some few challenged ballots would be cast, which would not be secret, and that a concerned employer might derive a "fairly good idea" with respect to how people had voted. Respondent's manager repeated Respondent's prior letters' comments that should the Union win representative status, the firm might lose 70 percent of its work, since it was doing work which was not Boilermakers Union work, which other unions would not permit. Hillyer declared, further, that Respondent's welders would have to be tested by an independent testing agency to become certified journeymen welders; that he, Hillyer, felt several of the firm's welders would not be able to pass such a test; and that Respondent had a limited number of positions for apprentice welders. President LeCount finally reported, as the record shows, that Respondent had been "working on an insurance plan" for some time but could not offer it then and there because such an offer would be considered coercive.

The General Counsel's representative proffers no contention, presently, that Respondent's comments—within its March 12 letter and/or during the shop presentation noted—transgressed statutorily permitted limits; he suggests, however, that they merit consideration and should be given some persuasive weight, when Respondent's purportedly suspect motivation, for conduct specifically challenged herein, requires determination.

On Wednesday, March 21, this Board's Regional Office conducted a scheduled representation election, before work started, based on the Union's second petition for certification, previously noted. Fifteen votes were cast.[18]

By a vote of eight to four, the Union won designation as the collective-bargaining representative of Respondent's production and maintenance workers. Three challenged ballots were cast; they were not sufficient in number to affect the vote's result. The record herein warrants no determination regarding the identity of the challenged voters; it reveals, namely, that—despite Re-

[17] Respondent's secretary, though presumably available, was never summoned to testify; Fairall's testimony, regarding the incident, together with her subsequent comments with respect thereto, may, therefore, be taken as *datum*, within my view.

[18] The election was conducted pursuant to the Acting Regional Director's Decision and Direction of Election, which had been issued on February 21, following a hearing on the Union's petition. *Inter alia* the Acting Regional Director had therein determined that Working Shop Foreman Bryan Byrd, though clearly in charge of Respondent's shop crew, did not possess "authority" sufficient under the statute to warrant his designation as a supervisor not eligible to vote. Respondent, through counsel, had filed a timely request for review, questioning—concurrently with several other determinations—the Acting Regional Director's determination with respect to Byrd's voting eligibility. The firm's request for review had been denied.

spondent's previously proffered contention with regard to Byrd's purported supervisory status—he was permitted to vote, and did vote, without challenge.

4. Respondent's reaction to the representation election

a. *The layoffs of Galvin, Ross, and Yardley*

Late on the afternoon of Wednesday, March 21, Byrd summoned Galvin, Ross, and Yardley, the firm's trap cleaning crew, to Respondent's office; the men were notified that they were being laid off. They were given termination notices, signed by Respondent's general manager, which characterized their separation as a reduction in force, because their "occupational function" had been "absorbed" by another company.

The record—specifically, the composite testimony of Ross, Galvin, and Yardley which stands herein without challenge or contradiction—warrants determinations, which I make, that Byrd told them that he had not known their layoffs were coming; that he was sorry they were being laid off; but that traps were no longer being received from Northwest Alloys for cleaning. When Yardley, who had, during his service, driven the truck which had been used to bring traps from Northwest Alloys, asked who would drive the truck, Byrd reported that the truck had been "transferred" to Chewelah Contractors, Inc., which would handle all materials requiring transportation thereafter. Galvin, who had done nontrap work while in Respondent's service, was told that the firm was laying him off because the volume of such nontrap work was, likewise, reduced. When queried by Ross with respect to whether those laid off would be considered for rehire, Byrd replied affirmatively; he declared that the law required Respondent to contact them first before hiring replacements, but that it looked as if their layoffs were the first of many, which might "possibly" reduce Respondent's shop complement to five men.

b. *Subsequent developments*

On Thursday, March 22, Northwest Alloys sent Respondent three pieces of equipment—whether traps or related pieces the record does not clearly show—which would have to be cleaned. With matters in this posture, Respondent's general manager communicated with Yardley and Ross, notifying them that trap cleaning work, which they could perform, was available; while a witness, Hillyer contended that he had not then been able to communicate with Galvin directly, though he did so subsequently by letter.[19]

Respondent's general manager, I find, encountered Yardley hitchhiking on the highway during the March 22 late afternoon hours. He declared that Respondent had received some traps and queried Yardley with respect to whether he would come back to work the next morning.[20]

Yardley declared he would report as requested. When he reached home that night, however, he discovered that he had received three responses to prior inquiries, regarding possible employment, which he desired to pursue. Early on Friday, March 23, therefore, Yardley notified Respondent's secretary that he would be unable to report that day because of prior commitments.

Later, likewise on March 23, Hillyer telephoned Ross; when the latter subsequently returned his call, Respondent's manager solicited his Monday, March 26, return to work, since the firm had received a trap, from Northwest Alloys, for cleaning. Ross promised to report.

On March 26, Yardley reported to Respondent's shop before work started. When Hillyer arrived, Yardley asked whether Respondent's recall offer represented a mere "one shot deal" or whether he was being recalled for full-time work. Respondent's general manager replied that he could not guarantee full-time work, since Respondent had been given just three "traps" for cleaning.[21]

With matters in this posture, Yardley left Respondent's shop. According to Hillyer, Respondent's management has had no further direct contacts with him. I so find.

Shortly thereafter, Ross reported for work, pursuant to Hillyer's prior request. He asked what the length of the job would be; this time—so Ross' testimony shows—the general manager declared that it would be "part-time, sporadic" work. Respondent's laid-off employee declared that he needed "full-time" work, but that—should he be given part-time, sporadic work—he would require more than $5 per hour.

Ross testified at this point Hillyer and he had commenced a somewhat discursive conversation, during which Hillyer had allegedly declared that his hands were tied; that Ross had been told "this" would happen, should Respondent's workers opt for union representation; that he, Hillyer, was trying to build up Respondent's shop; that his retention of workers who were not "loyal" could not be expected; that Ross had stabbed

[19] The record, relative to Hillyer's subsequent contacts with Yardley, Ross, and, finally, with Galvin by letter, reflects some confusion or lack of certainty, both displayed by General Counsel's witnesses and Respondent's manager, with respect to dates and relevant developments. My factual determinations with respect thereto—set forth herein—derive, therefore, from the composite testimony provided by Ross, Yardley, Galvin, and Respondent's general manager, which I have reviewed with particular regard for logical probabilities.

[20] While a witness, Yardley reported that, during their conversation, Hillyer had questioned him about his "political" activities. Yardley had, so he testified, construed the general manager's query as his calculated solicitation of some comment regarding Yardley's presumptive "union" involvement; he recalled his response that he was not a boilermaker or steelworker, and had never been a union member before, but would support the firm's "tradesmen" in whichever direction they wished to go. Subsequently when questioned, Hillyer conceded that, "every time" he saw Yardley, he had raised the subject of his, Yardley's, politics. Respondent's general manager protested, however, that no references to "union" sympathies or support had been intended; he characterized his comments, rather, as "joking" references to Yardley's penchant for pursuing self-promotional schemes, concerned with "very little work and lots of money" which had never materialized. With matters in this posture, the significance of their conversational exchange will be considered, subsequently, within this Decision.

[21] On Friday, March 23, Yardley had been told that full-time position, with Respondent's Spokane competitor, was available; he had, however, been compelled to decline that "offer" since no reliable transportation facilities between his residence and the jobsite existed. The record herein suggests that Yardley's job opportunity, and his reaction to it, became a subject of discussion when he visited Respondent's shop. No determinations with respect thereto would seem to be required, however, for present purposes.

him in the back; and that he knew how Ross had voted during the representation election, since Respondent had a small shop, the firm's observer had carefully noted the sequence in which everyone had voted, and the ballots had been removed and counted in precisely reverse order. When Ross protested that his vote had not really mattered, Hillyer had declared, so the worker testified, that it had, since, if he had cast a "no" vote, the result would have been seven to five, some determinations with respect to the challenged ballots would then have been required, and the Union's representation bid would have been "tied up" for months. *Inter alia*, Ross recalled, Respondent's manager had "mentioned" that he knew how every one of the firm's workers felt about the Union, since he had a recording, provided by a "plant" who had carried a tape recorder to a union meeting at Decker's house.

Respondent's general manager, according to Ross' testimonial recollections, had continued their discussion. Ross had been asked whether he knew how "this whole union mess" had gotten started. When the worker proffered his theory, Hillyer had declared, allegedly, that Fierro was a Boilermakers Union member who had worked for Welk Brothers; and that he had been "sent" to Respondent to start the Union's campaign and drive the firm out of business. Ross testified that the general manager had shown him a Board charge form, containing Ross' name, which he, Hillyer, had called a "grievance slip" while declaring that it meant nothing, but that he expected to receive such "slips" whenever he laid off workers thereafter. Allegedly, he had likewise displayed a "shipping invoice" from Welk Brothers to Northwest Alloys for some repair work while implying that Respondent had "purchased" such information. Further, according to Ross, Hillyer had declared that Respondent's employees could strike; that, should they do so, they could be permanently replaced; and that their replacements might be physically powerful people, who might "beat the hell" out of strike pickets. The general manager had allegedly said that Respondent had no contract; and that, following a representation vote at his previous place of employment, the employer had "negotiated in good faith" for 7 years with no contractual consensus reached.

Finally, when asked whether Hillyer had mentioned "good things" happening, Ross reported that Respondent's manager had cited the insurance plan which President LeCount had previously quoted, plus a good "profit" sharing program which Respondent had planned.

Ross testified that with matters in this posture he declared that he would clean Northwest Alloy's traps, but that Respondent should continue its search for trap cleaners, since he needed full-time work. Respondent's general manager allegedly declared that he, Ross, should be able to find construction work, that Respondent would give him a good recommendation, but that prospective employers who called would be told he, Ross, was union affiliated.

Ross, as his testimony shows, then began work, with the help of some "new" workman who, presumably, had not handled traps previously. When, pursuant to mischance, he narrowly escaped injury, the worker, Ross, decided that he could not do the work with inexperienced help. Hillyer was allegedly so notified; when Ross volunteered to locate Galvin and return shortly, Respondent's general manager, as the worker testified, rejected the suggestion, declaring that he would clean the trap himself. Thereupon Ross left.

Confronted with Ross' detailed recital, summarized herein, Hillyer reported that Ross had been recalled; he conceded that, during their subsequent discussion, the March 21 representation vote had been discussed, but declared that he did not "really" remember "everything" which had been said.

However, Respondent's general manager, thereupon, solicited suggestive questions, bottomed on counsel's notes. When presented, then, with purported recapitulations or quotations from Ross' testimony, Hillyer proffered comprehensive denials; he provided significantly different recollections, regarding most of their conversation, while conceding that, with respect to some matters, he could not recall his "exact" words.[22]

Hillyer contended that his reference to a previous employer, whose contract negotiations had dragged on without resolution for 7 years, had been prompted by a question Ross had presented. Further, he testified that, when queried by Ross with respect to whether Respondent's workers could get insurance coverage, he had reported that could not be done "right now" pursuant to advice received from the firm's counsel.

When queried, further, with regard to Ross' March 26 visit, Hillyer testified that the worker had said he did not want to resume trap cleaning work unless Yardley and Galvin were likewise recalled; that he feared they would think he was "working against them" should he accept recall without them; and that, when told they were unwilling to return for part-time work or could not be reached, Ross had rejected recall and departed.

Clearly, the testimonial record, summarized herein, reflects pervasive conflicts between Ross and Hillyer, with respect to their March 26 conversation, the purported comments of Respondent's general manager, and the recalled worker's reaction to Respondent's proffered short-term work assignment. Determinations with respect thereto will be found, subsequently, within this Decision.

c. *Layoffs converted to discharges*

On Wednesday, March 28, Respondent's general manager notified Galvin, by letter, that Respondent had some "limited" work for him. Hillyer suggested that—should he be interested in "part-time" work, sporadic in

[22] *Inter alia*, Respondent's general manager denied that he had attributed Respondent's loss of business to the Union's victory; that he had characterized Ross as disloyal; that he had mentioned the company election observer's purported opportunities to determine how "everyone" had voted; that he had described Ross' vote as significant, citing the lost possibility of some delay, with respect to the Union's certification, had the latter voted differently; that he had queried Ross with regard to how the "union mess" had gotten started; that he had shown Ross a Board charge form; that he had discussed or suggested possible consequences, should Respondent's workers strike thereafter; that he had proclaimed his possession of some tape recording made during a union meeting at Decker's home; or that he had threatened to mention Ross' presumptive "union application" when contacted for references by other firms.

volume, with respect to which Respondent could proffer no guarantees, pending some workload revival—he should provide a telephone number through which he could be reached or call the firm daily.

Likewise, on the date designated, Respondent's general manager sent letters to the State of Washington Department of Employment, regarding his postlayoff contacts with Respondent's former trap cleaners. With respect to Yardley, he reported a prior March 22 proffer of some "limited amount of work . . . on a part-time basis" which the worker had refused on March 26, because he desired full-time employment.[23]

With respect to Ross, Hillyer reported a prior "March 26th, [sic]" proffer of some "limited amount of work" which could provide "part-time" employment. He declared that Ross, specifically on "March 27th [sic]" had, however, reported that he was not interested in "part-time" work, and "did not know how to do the work" proffered. Respondent's manager, I find, noted his "agreement" with Ross' decision to find work elsewhere. With respect to Galvin, Hillyer reported merely that he had theretofore been unable to communicate by telephone; he forwarded a copy of his letter, as previously noted, which he had dispatched that very day.[24]

That day, March 28, Galvin, Ross, and Yardley met to consider their situation. They decided that—since their termination notices, received from Respondent, had reported their layoff because "another" firm had "absorbed" their trap cleaning function—they would seek to determine who, other than Respondent, was cleaning NWA's traps and would solicit such work. A conference with Dennis Boyce, NWA's purchasing agent—not the firm's personnel director—was arranged, set for 9 o'clock the following day.

When Galvin, Ross, and Yardley met with Boyce, their discussion seemingly produced some crosstalk and confusion. Respondent's laid-off workers—so their testimony, considered in totality, persuasively shows—were requesting information with regard to NWA's working arrangements with Respondent; whether "anybody else" beside Respondent was then cleaning Northwest Alloys' traps; how long, thereafter, such trap cleaning work would continue to be available before NWA would eventually take over that function; and whether they could do the firm's current cleaning work either for Northwest Alloys directly or for whatever "other" firm might be performing such work. Northwest Alloys' purchasing agent, however, concluded—as his testimony, fairly construed, reveals—that Galvin, Ross, and Yardley had represented themselves as Respondent's laid-off trap cleaning crew, prepared to "do business" with his firm, functioning under some proposed "North Star Mineral and Metal" company name. Proceeding upon this belief, Boyce declared, I find, that Northwest Alloys was still doing business with Respondent, pursuant to their "purchase agreement" reached in November 1978 with a prospective June 1979 termination date; that his firm planned to phase out Respondent's trap cleaning work, shortly, and "would be taking [such work] on" themselves; that, for safety reasons, Galvin, Ross, and Yardley could not, then, clean traps within NWA's plant; that, before Northwest Alloys could "do business" with "North Star Mineral and Metal" relative to trap cleaning work which NWA was not yet ready to perform itself, those concerned would have to procure a state business license; that, when licensed, Galvin, Ross, and Yardley could call him to discuss possible "trap cleaning" work further; but that their charges would have to be competitive with Respondent's for whatever contract work Northwest Alloys might still require.

Thereupon, I find, Galvin, Ross, and Yardley left; Purchasing Agent Boyce, later that day, notified Respondent's president regarding their visit.

Likewise, on March 29, Respondent received formal Regional Office notices regarding the March 27 Board charges, previously filed by the Union, wherein the firm's March 21 layoffs—with reference to Galvin and Ross particularly—had been challenged as discriminatorily motivated.[25]

On Friday, March 30, with matters in this posture, Galvin telephoned Hillyer, responding to his March 28 recall letter. Respondent's general manager, however, told him to disregard the firm's work offer, since Hillyer had learned that Galvin and his fellow trap cleaners were going into business for themselves and would function as Respondent's direct competitor.

Likewise, I find that on the date designated Hillyer drafted and subsequently dispatched letters, with termination notices enclosed, to Galvin, Ross, and Yardley, notifying them that, since they were reportedly forming some "new company" which would function in direct competition with his firm, their "employment" was being formally terminated. These letters were presumably received by Respondent's former trap cleaners on Monday, April 2, or shortly thereafter. Subsequently, in separate letters dispatched to Respondent's general manager, Galvin, Ross, and Yardley denied their involvement with any business venture calculated to put them into direct competition with Respondent; Hillyer, in separate replies, rejected their contentions, however, declaring that he had received "information from a reliable source" with regard to their attempted solicitation of Northwest Alloys, relative to Respondent's trap cleaning business.

d. *Fairall's recall*

Concurrently, I find that Respondent's general manager drafted a letter to Fairall, whose February 2 layoff has previously been herein noted. Fairall was notified that:

[23] Within his letter, Hillyer delared that, since he could not guarantee full-time work, Yardley's decision to spend his time looking for such work might be "advantageous" for him; Respondent's manager solicited help for Yardley, whom he characterized as a hard worker, who learns quickly.

[24] In the meantime however, specifically on Friday, March 23, the Union's business representative had drafted Board charges, bottomed on Respondent's March 21 layoffs, with reference to Galvin and Ross particularly. These charges had been received and docketed in this Board's Regional Office on Tuesday, March 27.

[25] The Union's parallel charge, with regard to Yardley's layoff, drafted by Business Representative Rawlins on the date now under consideration, March 29, was not docketed until April 2, thereafter. Respondent's notice, with regard to their final charge was received April 4.

> On February 8, 1979, we instructed people to contact you to return to work and they were unable to reach you. As of this time our fabrication work has picked up and we are able to offer you employment.

The worker was requested to communicate with Respondent, since his current whereabouts were unknown to the firm. Hillyer's letter, though dated April 2, was dispatched by certified mail on April 9 and directed to a Colville, Washington, rural route address with a request that it be forwarded. Fairall had, however, left the Colville area; the letter, therefore, was ultimately forwarded to his Bellingham, Washington, place of residence. I find that he received it some time subsequent to April 10; the present record, however, warrants no determination with respect to his response.

C. *Discussion and Conclusions*

1. The discharges of Fierro and Decker

a. *The questions presented*

As previously noted, the General Counsel charges that Respondent's general manager reacted to the Union's demand for recognition by questioning the firm's shop foreman, Fierro, with regard to his knowledge of the union campaign; by declaring his, Hillyer's, determination to discover which of Respondent's workers were responsible; by threatening a temporary plant closure with concomitant mass discharges; and, finally, by terminating both Fierro and Duane Decker, because of their presumptive union sympathies or purported participation in the Union's designation card distribution.

Respondent contends, however, that General Manager Hillyer cannot legitimately be charged, on this record, with statutorily proscribed threats or interrogation, directed to Fierro particularly, because the latter held a supervisory position. Further, the firm contends that, since both Fierro and Decker were vested with supervisory powers throughout the period with which this case is concerned, their terminations, challenged herein, should not be considered subject to Board proscription.

With matters in this posture, questions regarding the putative supervisory status of Fierro and Decker, when they were terminated, must necessarily be preliminarily resolved.

b. *Applicable principles*

The mere possession of some conventional supervisory title does not establish its holder's supervisory status, under the statute; rather, the confirmed functions, duties, and authority conferred upon the persons concerned will be considered determinative. *Capital Transit Company*, 114 NLRB 617, 618–619 (1955), cf. *Highland Telephone Cooperative Inc.*, 192 NLRB 1057, 1058 (1971), in this connection.

Section 2(11) of the statute defines supervisors debarred from exercising particular organizationl rights which rank-and-file workers may properly claim. The term, defined through references to particular powers which holders of supervisory positions may presumptively possess, compasses:

> [A]ny individual having authority, in the interest of the employer, to [perform some 12 designated functions] or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Though workers will be considered supervisors whenever this Board's record demonstrates, preponderantly, that they possess any one of Section 2(11)'s designated powers, considered disjunctively, regardless of the frequency with which such powers may be exercised, the statute clearly requires, further, that their exercise of some designated power, or powers, must be nonroutine, and require the use of independent judgment. *Maine Yankee Atomic Power Company* v. *N.L.R.B.*, 624 F.2d 347, 360 (1st Cir. 1980); *N.L.R.B.* v. *Security Guard Service, Inc.*, 384 F.2d 143, 146–147 (5th Cir. 1967); see, likewise, *N.L.R.B.* v. *Southern Bleachery & Print Works, Inc.*, 257 F.2d 235, 239 (4th Cir. 1958), in this connection.

Thus, workers who may perform some listed 2(11) function merely occasionally, or perfunctorily, will not be considered supervisors; they must be required, consistently, to display true independence of judgment, while discharging such functions. *Dubin Haskell Lining Corp.* v. *N.L.R.B.*, 375 F.2d 568, 570 (4th Cir. 1967); *Golden West Broadcasters—KTLA*, 215 NLRB 760 (1974). Moreover, "[i]t is a question of fact in every case as to whether the individual is merely a superior workman . . . who exercises the control of a skilled worker over less capable employees, or a supervisor who shares the power of management." *N.L.R.B.* v. *Southern Bleachery & Print Works, supra*; see *Haynie Electric Company, Inc., et al.*, 225 NLRB 353, 360 (1976), and cases therein cited. Accordingly, "[t]he Board has a duty to employees to be alert not to construe supervisory status too broadly, because the employee who is deemed a supervisor is denied employee rights which the Act intended to protect." *Westinghouse Corp.* v. *N.L.R.B.*, 424 F.2d 1151, 1158 (7th Cir. 1977). Mindful of these considerations, we must now review the present record.

c. *Putative supervisory status*

In July 1978, when Don Robbins—then Respondent's general manager—hired Fierro, he was designated "shop lead [man]" specifically. The record herein warrants a determination that he was conventionally considered Respondent's working shop foreman throughout his period of service.

Nevertheless, as previously noted, the fact that Fierro may have been generally considered a foreman "in charge" so far as Respondent's shop was concerned cannot be deemed determinative, with regard to his supervisory status. His actual powers, duties, and responsibilities, rather than his title and control. Cf. *Berry Schools* v. *N.L.R.B.*, 627 F.2d 692 (5th Cir. 1980). To put the matter differently, rank-and-file employees cannot be transformed into supervisors merely by investing them

with a title, coupled with a purely "theoretical" power to perform one or more of the statutorily enumerated supervisory functions.

The record herein, considered in totality, warrants determinations, within my view, that Fierro merely exercised the routine control of a skilled worker over less capable or less experienced employees, rather than the control of a supervisor sharing management's powers.

True, Respondent's shop "foreman" received certain perquisites or fringe emoluments, by virtue of his nominal position, which the firm's regular shop workers did not enjoy. He was permitted to use a shop office next to General Manager Hillyer's where blueprints and drawings were regularly kept.[26]

Though hourly paid, like the rest of Respondent's shop workers, he received $8.60 per hour; three of Respondent's shop workers, at least, were then being paid $7 per hour. Fierro participated in management's medical and dental benefit program, but was required to contribute part of the program's premium cost. He was, further, eligible for life insurance coverage, for which he was required to pay. Finally, he, together with Decker, received holiday pay, which Respondent's shop workers did not receive. These presumptive "indicia" with respect to Fierro's special status, however, merely suggest, but do not prove, that he was considered a management representative.

Fierro had no direct authority to hire workers. Job seekers were required to prepare their applications in Respondent's office; these general managers, Robbins or Hillyer, would initially review. Fierro would, then, be requested to give such applicants, preliminarily considered qualified, welding tests to determine their technical competence.[27]

The shop "foreman" would then report his tests results; he might recommend action, based on some given applicant's test. If that applicant had passed his test, and if work were was available, Respondent's manager would direct him to commence work. While a witness, Hillyer declared that, when Fierro had recommended a job seeker's hire, after his welding test had been passed, he, Hillyer, had taken Fierro's word "almost" every time; he conceded, however, that Fierro had "hired" no workers whom he, Hillyer, had not talked with beforehand.[28]

Though Fierro had routinely prepared and signed "Employee Information" forms memorializing new hires and various other personnel actions, his testimony, which I credit, warrants determinations that the workers concerned had been hired beforehand; that his function had essentially been clerical; and that his "authorization" had not really been required. Though Hillyer contended, generally, that Fierro was authorized to recall laid-off workers no specific examples were cited. Fierro's testimony that he was neither empowered to recall such workers nor requested to provide "effective" recommendations with respect to their recall merits credence.

Throughout his period of service, Respondent's shop "foreman" had never been required to suspend or discipline shop workers; while a witness, Hillyer conceded that the subject had never "come up" prior to Fierro's termination. The general manager's purely conclusionary testimony that his shop "foreman" had been "authorized" to send workers home, when they reported for work drunk, merits rejection, within my view.

Save for Hillyer's categorical witness chair declaration, proffered without any citation of exemplars which might have "lent verisimilitude to an otherwise bold and unconvincing narrative," the present record provides no warrant for a determination that Fierro had been considered empowered to lay off shop workers or direct their discharge. He testified, without contradiction, that he had never even recommended layoffs or terminations. I so find.

With respect to Fierro's power to determine or control conditions of work, within Respondent's shop, the record herein does reveal testimonial conflict. The shop "foreman's" credibly proffered recollections, however, will within my view finally support determinations that Fierro merely "assigned" work to particular shop crewmembers after General Manager Robbins or Hillyer had given him work orders for those jobs which would have to be done, specified time targets within which they would have to be completed, and told him how many men to designate for each shop project; that he then chose men for particular tasks, based on his craftsman's knowledge with respect to their background, experience, and welding capacities; and that—when workers had to be designated for transfers to field crews—the firm's general manager, rather than Fierro, selected them, usually choosing men who had done field work previously. Fierro, for some 10 percent of his worktime, concededly did shop job layout work; when necessary, he "showed" newly hired workers jobs which they would be required to handle, showed them how required work should be done, and worked with the tools of his trade.[29]

Overtime work when required would be authorized by Respondent's general manager; Fierra would merely be required to designate who would be requested to work. Since overtime work assignments were not considered mandatory, workers could refuse them; when this happened, Fierro would have to work overtime in the designated worker's place.

When not preoccupied with layout work, selecting workers for particular tasks, and working with his tools, Fierro would "check out" whatever progress was being

[26] Fierro kept his toolbox there. The record provides no clear indication with regard to how much time he spent there, and how much time he spent on Respondent's shop floor.

[27] Fierro testified, without contradiction, that he had been chosen to give welding tests merely because of his prior work experience.

[28] Once, when the shop "foreman" had reported a job seeker's failure to pass a welding test, then General Manager Robbins had, nevertheless, hired the applicant for service as a welder's helper.

[29] While a witness herein, Fierro testified that some 40 percent of his working time was spent working with his tools. When the Regional Office's hearing on the Union's representation petition, previously noted, was held, Fierro had testified that he worked with tools some 25 percent of the time. This discrepancy, within my view, poses no significant problem with respect to Fierro's credibility. The record warrants a determination that the time he spent on Respondent's shop floor varied from day to day; both figures cited, during his two witness chair sessions, represent "approximations" merely calculated to reflect his best guess with regard to his work record and averaged for some indeterminate period. His successor, Bryan Byrd, conceded, while a witness, that, when Respondent's shop is busy, he spends "most of his time" on the shop floor, working.

made on Respondent's current shop jobs—usually three, four, or five in number—to determine whether work on them was being performed in conformity with Respondent's quality standards. Like this Board's Regional Director, I am satisfied that Fierro's duties and responsibilities, in this respect, did not amount to responsible direction requiring the use of independent judgment. Rather, I find that Fierro, concededly a qualified and experienced workman, directed his fellow workers on the basis of his technical expertise.

When workers reported their absence due to illness, they customarily communicated with Respondent's secretary; their messages might be relayed to Respondent's general manager or Fierro directly. On the single occasion, recalled by various witnesses, when a worker on Decker's field crew had requested time off, the latter had relayed his request to Fierro; the shop "foreman" had then relayed the worker's request to Respondent's general manager without a recommendation.[30]

Shop workers were required to report their total time spent at work, the shop projects they were working on, and their time spent devoted to each designated shop project. Fierro, who, like his fellow workers, was required to submit time reports, would thereafter "initial" their cards, following his determinations, merely, that they had *correctly* recorded the projects they had worked on and their daily time spent with respect to each separate project listed.

When workers requested raises, Fierro had relayed their requests to Respondent's general managers. With respect to some 10 requests, he had recommended favorable action; his recommendations had been followed, however, merely on three occasions. When requested to proffer his "opinion" with respect to how particular workers were performing, Fierro would comply. While a witness, he recalled that General Manager Robbins had once solicited his view with respect to whether Yardley had been doing a proper job; Fierro testified credibly, however, that Robbins had already decided to terminate Yardley, and that he had merely concurred with the general manager's decision.[31]

When workers presented Fierro with complaints or grievances, Respondent's shop "foreman" merely brought them to Robbins' or Hillyer's notice. His testimony warrants determinations, which I make, that he never recommended dispositions or adjustments; that General Manager Robbins or Hillyer would, themselves, investigate such situations; and that he, Fierro, would not participate.

With matters in this posture, I find, consistently with the Regional Director's conclusions previously noted, that, with respect to those matters wherein Fierro's recommendations were proffered or solicited, they were not "effective" recommendations, but were merely considered suggestions. With respect to those matters wherein the shop "foreman" was required to provide leadership or direction, I am satisfied further that Fierro's duties and functions did not compass "responsible" direction, calling for independent judgment, but merely compassed routine direction, bottomed upon his prior experience and technical expertise.

In this connection, I note finally that Bryan Byrd, Fierro's successor—though presumably vested with comparable duties and responsibilities—voted without challenge, from either Respondent or the Union, when this Board's March 21 representation vote was conducted.

Upon this record, I conclude that Fierro, when terminated, did not hold a position which would warrant his present debarment from remedial Board directives, should his termination be found discriminatory.

With respect to Duane Decker, determinations comparable with those previously set forth herein—sufficiently persuasive to warrant a similar conclusion that he could not legitimately be considered a statutory supervisor—would, within my view, be warranted.

Decker had been hired by General Manager Robbins in April 1978; he had been hired as a journeyman welder. Within 2 months, however, Robbins had "promoted" him to Respondent's designated "leadman-shop" and then assigned him a working field foreman's post. In that capacity, his pay had been raised to $8.50 per hour. Respondent's highest paid field workers, then, were being paid $6.50 per hour.

Decker had been granted Blue Cross medical insurance coverage; Respondent paid most of the premium cost, but the field foreman contributed. He had been notified, further, regarding his eligibility to procure dental benefits, but had rejected such coverage. While a field foreman, serving under Robbins, Decker had not received holiday pay; his first holiday pay had covered Christmas Day 1978, following his December transfer to Respondent's shop crew, previously noted; Hillyer had authorized the payment in question, following Decker's request.

While doing field work, Decker had been compensated for his travel time to and from Respondent's field project sites, under circumstances noted hereinafter; Respondent had, further, provided him with a gasoline allowance, and had compensated him for maintenance and repair costs related to his personal truck's operation, since his truck had been used for company business purposes.

Throughout his period of field service, Decker had reported to Respondent's shop daily, before 8 o'clock; he had been required to pick up needed materials and tools for transportation to Respondent's field projects. When such projects were scheduled, Robbins would transport him to jobsites, describe generally *what* was to be done, tell him *how* Respondent's site work was to be done, and define *when* it was to be done; Respondent's general manager would further designate the workers who would constitute Decker's field crew. (According to Decker, field crew complements would vary between two and six men. Three workers would constitute the firm's average crew.)

[30] Fierro testified that Respondent's general manager had never resolved the matter, and the worker concerned had taken his time off without permission.

[31] Yardley had been terminated, but had subsequently been recalled, and had worked until his March 21 layoff, challenged herein. So far as the record shows, Fierro had not heen consulted with regard to his recall.

The field foreman then would "line out" their day's work, and designate the workers who were to handle specific portions. He would likewise work on the project himself with his tools; according to Decker, such work required 90 to 95 percent of his time. If Respondent had two field projects going, Decker would work on one, and then visit the other to check its progress.[32]

When his workday ended, Decker was required to revisit Respondent's shop, where he reported each field project's progress directly to Respondent's general manager; sometimes, during these daily "report" sessions, Robbins would give Decker instructions for the following day's work.

When workers were hired, Decker did not participate. He conceded that he had "recommended" some eight workers for hire; his testimony—proffered without contradiction—nevertheless warrants determinations that Robbins had first spoken with the workers concerned; that no more than three of those workmen, subsequently recommended by Decker, had been finally hired; and that Robbins had made these decisions.[33]

On the few occasions when Respondent's working foreman had recommended certain workmen for transfer to his field crew complement, Robbins—as Decker's testimony shows—had rejected his suggestions. While a witness, Hillyer conceded that Decker had merely been authorized to request men.

Overtime, when required, would be authorized by Robbins; Decker would merely convey his authorization. Respondent's entire field crew would work, with Decker designating their overtime work assignments.

Like Fierro, Respondent's field foreman would merely relay field workers' raise requests to his superior without a reoommendation. (Decker testified that, when Robbins would ask how well workers were performing, he would proffer perfunctory favorable comments.)[34]

When Respondent's field workers came to Decker with complaints or grievances, he, like Fierro, had merely passed them along to Robbins, without suggestions for their disposition. Questioned in his connection, General Manager Hillyer testified consistently with Decker's proffered recollection that Respondent's field foreman would merely "come in the shop and say something" whereupon the matter would be straightened out.

Upon this record, I am satisfied that Respondent's field foreman—like his shop counterpart—could not reasonably have been considered a statutory supervisor during his period of field service.

Likewise, I note further that Decker had been transferred into Respondent's shop, following the completion of his last field assignment, some 3 or 4 weeks prior to his termination. When discharged, therefore, he was performing welding and layout work, functioning as a member of Respondent's shop crew. (Though his hourly rate of pay had not been reduced, Respondent's former field "foreman" was providing services under Fierro's nominal oversight.)

With matters in this posture, Respondent's contention that Decker, when terminated, held a supervisory position, within the meaning of the statute, clearly merits rejection.

d. *The challenged discharges*

Though Fierro's January 15 termination notice contained no statement suggestive of Respondent's rationale or his discharge, the record herein, within my view, will fully warrant a determination that he was told his separation had been motivated by General Manager Hillyer's belief that he had been distributing the Union's authorization cards. That Hillyer's statement fairly reflected Respondent's motivation cannot be doubted.

When hired, Fierro had told Respondent's president and general manager that he was then working for Welks Brothers, Respondent's Spokane, Washington, competitor, and that he was then a Boilermakers member. Thereafter, when Hillyer received the Union's demand for recognition, and purportedly discovered—through his questions directed to Respondent's shop workers—that Fierro had, so far as they knew, been *cognizant* with respect to the Union's organizational campaign, he could reasonably have concluded that Fierro was *responsible* for that labor organization's presence. Clearly, he drew that inference; Fierro was, thereupon, promptly discharged.

Shortly following the shop "foreman's" termination, Hillyer told Yardley, so I have found, that Fierro, together with Decker, had been "relieved" because they had organized the Union's campaign. Whether his *belief* in that regard—so far as Fierro was concerned—was, or was not, well founded, matters nought; the fact that he proceeded upon that *belief*, when the shop "foreman" was terminated, stands clearly revealed within the present record.

In this connection, I note that when Respondent's shop "foreman" filed his state unemployment compensation claim, wherein he reported the reason for separation which Hillyer had finally vouchsafed him, Respondent's management responded, consistently with Fierro's statement, that he had been discharged because "Employee was management and partaking in union organizing." Within the State of Washington Employment Security Department's determination notice, with respect to Fierro's claim, Respondent's concession was—credibly, I find—reported. (See Fed. R. of Evid., Rule 803(8)(c), previously noted, in this connection.)

The fact that Respondent's management may have considered its proffered justification for Fierro's termina-

[32] During the Regional Office's representation case hearing, previously noted, Decker testified that he had spent 75 percent of his field time working, and 25 percent directing the work being performed by fellow field workers. As with Fierro, however, I find the presumptive mathematical discrepancy, between the field "foreman's" two proffered "approximations" regarding his time distribution, less than sufficient to raise significant doubts with regard to his credibility.

[33] Decker conceded that he had notified Fairall, when the latter was hired. The record, considered in totality, warrants a factual determination, however, that Robbins' decision to hire Fairall had already been made, and that Respondent's general manager had directed Decker to complete the clerical "paper work" formalities required to conclude the matter.

[34] While a witness herein, the foreman could not recall any raise requests, passed along by him, which had been granted. During the representation case hearing previously held he had recalled one raise request which Robbins had granted, based on his own knowledge regarding the worker concerned.

tion exculpatory—because Hillyer deemed him part of the firm's supervisory hierarchy, properly subject to discharge for suspected participation in Complainant Union's campaign—cannot detract from the probative worth of the firm's declaration, which clearly sets forth its motivation.

True, Respondent's president and general manager, subsequently, proffered different reasons for Fierro's discharge. When Respondent filed a formal appeal, from the employment security department's determination that the firm's former shop "foreman" had been terminated for a nondisqualifying reason, these management representatives contended: First, that he had "lacked the ability" to discharge the duties and responsibilities required by his position; and, second, that his "integrity and loyalty" to their firm had been questionable. In support of these contentions, Respondent's representatives had reported that Fierro had not been getting "proper performance" from the firm's shop workers functioning subject to his purported direction; and that his failures, in this connection, had contributed to Respondent's monetary "losses" chargeable to certain bid projects. Further, they reported that, sometime previously Fierro had failed to use proper purchase order procedures, when his personal vehicle had been "overhauled" by a Colville firm, which had billed Respondent for its services; and that, when queried with regard to his "knowledge" relative to the Union's organizational campaign, he had mendaciously denied such knowledge.

Herein, Respondent's management representatives have substantially recapitulated these purported justifications for Fierro's termination. The testimonial record, however, reveals that Hillyer's three purported discussions with Respondent's shop "foreman" relative to particular project cost overruns had shortly followed his December 1978 designation as the firm's general manager, and that Fierro's failure to follow proper purchase order procedures had not ever come to Hillyer's notice until sometime after the shop foreman's termination. Within my view, these belatedly proffered justifications for Fierro's termination—never mentioned during his final conversation with Respondent's general manager—reflect afterthoughts merely. Upon this record, they could hardly be considered motivational factors; rather, clearly merit dismissal as pretextual.

Respondent's final contention, that the shop foreman's discharge should be considered justified because he had lied with respect to his lack of knowledge regarding the Union's campaign, derives obviously from General Manager Hillyer's belief that, since Fierro had properly been considered a member of the firm's management team, his lack of candor, when questioned in that regard, could legitimately be deemed disloyal. Previously within this Decision, however, Fierro's statutory "employee" position and tenure have been confirmed. With his nonsupervisory status taken as datum, Respondent's conceded interrogation necessarily transgressed permissible limits; Fierro's refusal to concede knowledge with respect to the Union's campaign plainly reflected his privileged reliance on statutorily protected rights; and Respondent's concession that he was dismissed, *inter alia*, because he had "lied" with respect to his lack of knowledge constitutes clear, though tacit, confession now that his termination had been bottomed upon statutorily proscribed considerations. I so find.

With respect to Decker's termination, little more need be said. The record, herein, considered in totality, warrants a determination—which I make—that Respondent's former field crew leader, like Fierro shortly beforehand, was discharged because of General Manager Hillyer's belief that he had participated in the Union's organizational campaign or manifested union sympathies.

On January 15, subsequent to his receipt of the Union's demand for recognition and Fierro's consequent discharge, Hillyer had seen Decker and Fierro, together, in Colville, shortly following the shop foreman's termination. Thereafter, when Decker reported for work the following day, he was greeted with a command to pick up his tools and leave, coupled with a comment that he had been told "no damn union" purportedly on some previous occasion.[36]

Upon this record, determinations would clearly be warranted that Respondent's general manager had become exercised, specifically, because he had seen Decker in Fierro's company; that he had thereupon concluded they were concertedly participating in the Union's organizational campaign; and that his conclusion, noted, had been a prime "motivating factor" with respect to his January 16 discharge decision. I so find

These determinations, however, need not rest on deductive inferences solely; they stand buttressed with collateral record support. Hillyer's comment that he would not permit himself to be "stabbed in the back" twice clearly conveyed an Aesopian reference to his belief that Decker's course of conduct had been not merely thoughtless or irresponsible but disloyal. Several days later, Respondent's general manager, so I have found, specifically conceded that Decker, like Fierro, had been terminated because of his suspected involvement in the Union's campaigns. And during a final conversation with Decker, several weeks later, Hillyer conceded, substantially, that his course of conduct, subsequent to Respondent's receipt of the Union's recognition demand, had been motivated by his desire to protect himself from possible criticism.

With matters in this posture, General Counsel's representative has, within my view, made a *prima facie* showing sufficient to support the inference, noted herein, that Respondent's opposition to Decker's conduct, herein found protected, was a prime "motivating factor" in General Manager Hillyer's discharge decision. *Wright Line, supra*. This having been established, our focus of inquiry must shift to determine whether Respondent has persuasively demonstrated that Decker's termination would have been effectuated, when it was, even in the absence of his statutorily protected conduct.

[36] Significantly, Respondent's general manager—though purportedly "ready to go to war" because of what he had observed the day before—made no references whatsoever to his presently claimed belief that Decker had misrepresented his reason for failing to report for work on January 15; nor did he challenge Decker's previously proffered rationale, with references to his, Hillyer's, purported January 15 sighting of Decker's truck, parked near a Colville tavern, or elsewhere.

Upon this record, I am satisfied that Respondent has not successfully carried its burden of persuasion. Hillyer claimed, specifically on Decker's termination notice, that he was being discharged for "excessive" absences from work; when responding to Decker's unemployment compensation claim, however, Respondent merely contended—so the employment security department's representative reported—that he had been absent without "calling in" several times. Herein, Respondent proffers no persuasive testimonial or documentary support for either contention.[37]

Further, Decker was never informed, prior to his discharge, that his job was in jeopardy because of his absences or purported failures to give timely notice. Respondent's contention that his termination was causally related to such purported deficiencies must be considered pretextual.

With respect to Respondent's claim that Decker's performance had been less than satisfactory, the firm's record presentation likewise carries no persuasive thrust. Hillyer, who became Respondent's general manager early in December 1978, had never given Decker a field assignment, and Respondent's Sara May Lumber Company field project had been completed prior to Decker's mid- December transfer to Fierro's shop complement, 1 month prior to his discharge. While on Respondent's lumber company project, Decker had not been taxed, so I have found, with performance deficiencies. Hillyer's comments with regard to Sara May Lumber Company's purported "complaints" had been proffered as mild, cautionary admonitions; Decker had been given no indication that his job tenure might be jeopardized. With matters in this posture, Respondent's patent "reaching back" when challenged to justify Decker's termination clearly smacks of pretext.

Assuming, *arguendo*, that Respondent's general manager was referring to Decker's January 5 conduct when he labeled the former field crew leader "unreliable" within his termination notice, I find Respondent's position, for reasons previously noted herein, lacking in record support. Hillyer's purported conclusion—that Decker's proffered reason for his failure to report had been mendacious, and that he had absented himself from work while engaged upon some "frolic" connected with personal business concerns—could only have been derived from simplistic inferences, bottomed on misunderstandings and/or mistaken premises with respect to which he had neither sought clarification nor verification. His purpored suspicions were never "spelled out" for Decker's edification, prior to, or concurrently with, the latter's discharge. I conclude, therefore, that Hillyer's purported reliance on his proffered rationale again smacks of pretext, calculated to camouflage his primary, statutorily proscribed, motive for Decker's separation.

[37] The record with respect to Decker's calendar year 1978 absences must be considered less than clear. Respondent's former field crew leader claims a limited number of absences, with respect to which he had consistently reported in a timely fashion. Respondent's purportedly contradictory showing rests on generalized testimonial proffers, merely. During January 1979 shortly prior to his discharge, Decker had been absent for 3 days due to an industrial accident, and 1 day because of his truck's brake problem. No failure to "call in" with respect to these absences has been claimed.

2. Interference, restraint, and coercion

Despite Hillyer's proffered denials, determinations have been made herein that, following his January 15 receipt of the Union's recognition demand, the general manager questioned Fierro, together with a number of his fellow shop workers, regarding the Union's campaign. Various people were questioned with regard to who had started the union talk, who had distributed the Union's designation cards, and who had signed such cards; several were queried, generally, with regard to what they knew about the union activity.[38]

During conversations with Fierro and Don Fairall, Respondent's general manager further threatened that—for the purpose of foreclosing Respondent's unionization—the firm might be shut down for 30 days, while its current crew complement might, consequentially, face termination.

Such interrogation and threats clearly may reasonably be considered calculated to interfere with, restrain, and coerce workers—both those directly addressed and those who might be affected, should any verbalized threats be consummated—with respect to their exercise of rights statutorily guaranteed.

Likewise, I find, Hillyer's statement to Fierro that he was being terminated for distributing union designation cards—together with his subsequent statement to Decker that he, Decker, was being discharged because Respondent did not want some "damn union" representing its shop personnel—carried a coercive, statutorily proscribed, threat.

Within his brief, the General Counsel's representative contends that General Manager Hillyer transgressed permissible limits when, during a March 22 roadside meeting, he queried Respondent's previously laid-off "trap" cleaner, Yardley, regarding his "politics." Yardley, testified that he considered Hillyer's query a disguised attempt to probe his feelings with regard to the Union's presence. I have not, however, been persuaded. While a witness, Hillyer contended that his query had been proffered jokingly, prompted by Yardley's purported penchant for promotional "schemes" which never seemed to pan out; though his reference to politics, supposedly within such a context, may have been somewhat unusual, it can hardly be considered farfetched.[39]

[38] While a witness, Hillyer conceded that he had questioned Bryan Byrd, then a rank-and-file shop worker, together with another worker, never named, with regard to these matters. He contended merely that he had chosen to question them because he believed they would respond truthfully; assuming, *arguendo*, that, by this testimony, Hillyer meant to suggest they were queried because they would not have been likely, within his view, to consider such interrogation threatening or coercive, I find such a suggestion beside the point. Interrogation reasonably calculated to produce responses concerned with the conduct of workers exercising statutorily guaranteed rights transgresses permissible limits, whether the workers questioned do, or do not, subjectively consider themselves interfered with, restrained, or coerced thereby. Further, Respondent's subsequent decision, within the week, to designate Byrd as Fierro's successor clearly could not *nunc pro tunc* render Hillyer's prior interrogation noncoercive, within the meaning of the statute and relevant Board decisions too numerous to cite.

[39] According to Webster's Collegiate Dictionary, the word "politic," when used adjectively, refers to conduct characterized by shrewdness; when compared with "expedient" the word connotes a lack of candor or sincerity in some degree.

On its face, Hillyer's query, within my view, merits characterization as equivocal; the likelihood that it was calculated to interfere with, restrain, or coerce Yardley with respect to his prospective exercise of statutorily guaranteed rights can hardly be considered preponderantly demonstrated within the present record.

Finally, the General Counsel's representative contends that Respondent's general manager during a lengthy rather discursive March 26 conversation with Marcus Ross, previously considered herein, had interrogated and threatened the recently laid-off "trap" cleaner. Further, he contends that Hillyer had, concurrently, created the impression, within Ross' mind, that union activities participated in by Respondent's shop crew complement had been kept under surveillance. With respect to these contentions, however, I find myself balanced in doubt. Though I have herein found Ross' testimony generally credible, his detailed recapitulation with respect to Hillyer's purported March 26 statements, particularly, suggests contrivance.[40]

Nevertheless, when confronted with the laid-off trap cleaner's recital, Hillyer testimonially conceded that their March 26 conversation had, indeed, compassed references to the Union; he professed a failure of recollection regarding its course, and could merely proffer generalized denials, with respect to Ross' testimonial version, when presented with a congery of leading questions. With matters in this posture, the record presents a trier of fact. on the one hand, with Ross' highly improbable narrative, countered merely with some less than persuasive denials. On balance, however, the General Counsel's representative, who must, under these circumstances, carry the burden of persuasion, has not, within my view, preponderantly demonstrated, through credible testimony, that Hillyer made the statutorily proscribed statements during his March 26 conversation with which Respondent has herein been charged.

3. Fairall's layoff for lack of work

As previously noted, Dean Fairall was laid off by Respondent's general manager on February 2, Respondent's regular payday. Fairall, a welder-fabricator, who had been primarily doing fabrication work, was given a termination notice which reported that he was being laid off "due to lack of work" but would be considered for rehire. When Fairall was given his layoff notice, Hillyer told him that Respondent had to let him go because the firm's "welders" would have to be retained.

The General Counsel's representative contends, nevertheless, that Respondent's proffered "lack of work" rationale for Fairall's layoff should be considered pretextual. He seeks a determination that Fairall was really separated because he had, several days previously, jokingly displayed a union representative's business card in Respondent's toolroom, while the firm's secretary was fortuitously present, and because General Manager Hillyer had thereafter become incensed when he learned about the welder-fabricator's business card display.

Within the present record, however, the General Counsel's representative proffers no *direct* testimony which would persuasively warrant a determination that Respondent's proffered "lack of work" reason for Fairall's separation should be considered contrived. Rather, he relies on *collateral* testimony solely. *Viz*:

> *First*, Fairall's proffered recollection that Bryan Byrd had told him, before his layoff, that Hillyer had been notified of the business card joke, and had been angered by it.
>
> *Second*, Ross' testimony that, subsequent to Fairall's departure, Byrd, when queried with regard to why the welder-fabricator had been laid off, had declared his "thought" that Fairall had waved his "union card" before the wrong people.
>
> *Third*, Decker's testimonial report that Byrd had told him Fairall had been laid off "to check out his attitudes," though there had been nothing wrong with his attitude. Byrd had—so Decker testified—declared that Fairall had "flashed" a Boilermakers Union card in Secretary Conover's office, and "somebody" had seen it.

Bryan Byrd—subpenaed as the General Counsel's witness and characterized by General Counsel's representative as an "honest" person who would not report things" unless they happened—declared, however, that he could not "recall" making the statements which Fairall, Ross, and Decker have herein severally reported.

Considered in totality, the present record, within my view, provides no sufficient warrant, *prima facie*, for the General Counsel's contention that Fairall's layoff derived from statutorily proscribed considerations. My determinations, in this connection, rest upon several grounds.

First: I note Fairall's testimony that, when he "flashed" Business Representative Rawlins' business card, he had done so briefly; that Respondent's secretary had then been some 15 feet distant; and that, presumably, she would not have been able to read the card or determine its contents precisely. The welder-fabricator's witness chair report, regarding this matter, warrants a determination, further, that he had merely designated the card displayed as Business Representative Rawlins' business card. The likelihood that Respondent's secretary would have considered the designated "incident" significant, I consider remote.

Second: Fairall conceded, while a witness, that, when he was terminated, the firm's secretary had told him she had not reported the business card incident to Respond-

[40] On March 21, the Union had won representative status. Directly thereafter, Ross had been laid off, together with two fellow workers, purportedly for lack of work. His visit to Respondent's facility had been sparked by Hillyer's report that some "trap" cleaning work would be available. Under these circumstances, logic suggests that Hillyer would hardly have been likely to transform their discussion regarding some merely available work into sustained conversation, largely devoted to the Union's ballot box victory, that victory's foreseeably deleterious consequences, candid revelations with regard to Hillyer's proclaimed knowledge relative to Ross' secret-ballot vote, his disappointment with the trap cleaner's vote, comments with regard to how their "union mess" had gotten started, forecasts relative to what might happen should Respondent's workers strike, further candid revelations that a union meeting had been tape recorded by a "planted" company employee, and comments calculated to suggest that prospective contract negotiations might be dragged out interminably. I note, in this connection, that Ross claimed Hillyer had shown him, during their March 26 conversation, the unfair labor practice charge, bottomed on Ross' prior termination, which the Board's Regional Office had not received or docketed until March 27.

ent's general manager. Though Fairall purportedly recalled a concurrent concession, on Secretary Conover's part, that she had related the incident to Mack Lamb, President LeCount's brother-in-law who worked nearby for Chewelah Contractors, LeCount's wholly owned firm, nothing within the present record would warrant a factual determination that Lamb had relayed Conover's story to Respondent's president or general manager. Any such conclusion would necessarily have to rest on full credit given Fairall's present *hearsay* report with regard to Conover's prior declaration that she had told Mack Lamb coupled with a determination that she had, indeed, done so, plus a purely *speculative* deduction that Lamb had thereafter communicated her recital to his brother-in-law or Respondent's general manager. Upon this record determinations that Respondent's management had somehow been made cognizant of Fairall's presumptive union sympathies and had consequently determined to dispense with his services would therefore be bottomed, finally, merely on supposition. Though the General Counsel's suggested chain of communication and causation may be conceivable, speculation that Fairall's layoff was discriminatorily effectuated, merely because it could have been so motivated, will not suffice.

Third: While a witness, Bryan Byrd could not "recall" making any statements calculated to suggest that Fairall's layoff had been discriminatorily motivated. Upon this record, his professed failures of recollection—proffered as denials—cannot be, within my view, categorically rejected; nothing within the record suggests how he might have gleaned the information, with respect to Hillyer's motivation for Fairall's layoff, which he purportedly disseminated. Should his presumptive denials be discredited, however, the General Counsel's presentation, with respect to Fairall's layoff would, within my view, still lack persuasive thrust. When, *arguendo*, Byrd made his purported comments with respect to Hillyer's motivation, he was serving as Fierro's shop replacement. His testimony warrants a determination that, while so designated, he had "the same duties [and responsibilities] in dealing with the men in the shop" which Fierro had previously borne.[41]

Necessarily, therefore, Byrd could not realistically have been, then, considered management spokesman. His putative comments, with respect to Hillyer's presumptive motivation or Fairall's layoff, when made, could not legitimately have been considered vicarious admissions, binding upon Respondent's management. Nor can this Board, within my view, consider them probative "admissions" for present purposes.

With matters in this posture, the General counsel's representative, I find, has failed to make his *prima facie* case that Fairall's layoff had been motivated, *in any degree*, by his casual "business card" display, presumptively revelatory of his union sympathies.

Should this Board, upon review, consider contrary determination warranted, I would note further that Respondent has, within my view, persuasively demonstratated, through its testimonial and documentary presentation, that Fairall's layoff was effectuated for business reasons which, presumably would have prompted his separation even absent his presumptive "pro-union" manifestation.

The record warrants a determination, which I make, that Respondent's volume of work on hand normally falls during the winter months. This pattern was, so I find, manifested during the December 1978–February 1979 period with which the General Counsel and Respondent have been concerned. In that connection, Respondent's business records—specifically, its payroll data compassing gross payroll figures and total hours worked by shop and field crews—reveal that the firm's manpower needs dropped precipitously following the 2-week payroll period which ended on Sunday, January 14, 1979; total compensable hours worked fell from 576 during the single week which ended on January 21, to 433 during the calendar week ending Sunday, February 4, within which Fairall was separated.[42]

Though Respondent's manpower needs rose slightly during the week which followed, they reached their winter lows during 2 successive payroll weeks directly thereafter. Total hours worked did not rise to their January 21 payroll week preslump level until the week which ended March 11.

While a witness, Fairall conceded that another shop worker—specifically Jerry Ringer, an experienced fabricator—had likewise been given a February 2 termination. He testified further that he had "heard" four shopworkers would be laid off, or were laid off, on February 13. These layoffs would have taken place within the 2-week period, previously noted, when Respondent's shop "total hours worked" reached their winter low; though Respondent's presentation reflects no direct documentation with respect to such layoffs, Fairall's testimonial concession regarding them stands without challenge or qualification.

The welder-fabricator may have had "four hours of work" left on the specific project he was working on when laid off. Further, there may have been specific tasks requiring 2 or 3 hours of work per week for which Fairall had concededly been considered well qualified. Upon the record, however, Respondent's business judgment that seasonal reduction in force was warranted, and that Fairall was, for the moment, considered a dispensable man, cannot be gainsaid.

With matters in this posture, then, I conclude and find that Respondent's burden of persuasion with respect to its business-related justification for Fairall's layoff has been satisfied.

4. Respondent's March 21 layoffs

Within his amended consolidated complaint, the General Counsel charges that Respondent, through its general manager, Hillyer, laid off employees Galvin, Ross, and Yardley on March 21; further, the General Counsel

[41] Previously, within this decision, I have found Fierro's position nonsupervisory. In substance, I have found that Fierro was merely a so-called straw boss who had provided leadership and direction by virtue of his prior experience and superior skills, rather than by virtue of some generally recognized status as management's shop representative.

[42] Since he was laid off on Friday, February 2, Fairall's separation had not, presumably, been responsible for the drop in total hours worked, recorded for the payroll period which ended on Sunday, thereafter.

charges that Respondent has, since their layoffs, failed and refused to recall them to their former or substantially equivalent positions because of their union and/or protected concerted activities.

These charges have, however, been set forth in greater detail, within the General Counsel's brief. He contends therein, for the first time, that Respondent violated Section 8(a)(1) and (3) of the statute:

> when Hillyer laid off the trap cleaning crew, Galvin, Ross, and Yardley on March 21, *and* terminated them on or about March 28. . . . [Emphasis supplied.]

Consistently therewith, the General Counsel seeks remedial directives calling for the trap cleaning crew's present reinstatement, plus "make whole" reimbursement for their loss of wages and benefits, calculated without regard for their putative terminations, following their conceded search for "interim employment" whereby their losses might have been mitigated. Further, the General Counsel seeks a directive requiring Respondent to expunge from its records whatever entries those records might contain purporting to show that Galvin, Ross, and Yardley had been discharged for "forming a company" which would function as Respondent's competitor.

The General Counsel's contention that statutorily proscribed considerations were "motivating factors" when Galvin, Ross, and Yardley were laid off, however, derives—like his contention with respect to Fairall's layoff—solely from deductive inferences bottomed upon the record considered in totality, rather than direct proof. He cites five record bases, from which he would have this Board deduce that the trap cleaning crew's March 21 layoff had been discriminatorily motivated; these bases, within my view, merit critical consideration.

First, the General Counsel would have this Board note that Galvin, Ross, and Yardley were laid off *directly following the Union's successful bid for representative status.* Within its situational context, however, their layoffs' timing, so I find, cannot reasonably be considered suspect.[43]

The reoord, herein, reveals that Galvin, Ross, and Yardley had been concerned primarily with "cleaning" operations confined to Northwest Alloys' traps, lids, and related reduction plant equipment. Respondent's services with respect thereto, however, had since its commencement been rendered pursuant to consensual arrangements which both Respondent and Northwest Alloys considered temporary. NWA's documentary commitment to deliver "traps" for cleaning had been written with a June 30, 1979, termination date; Respondent had been notified, however, that Northwest Alloys' trap deliveries might be "phased out" by the conclusion of that calendar year's first quarter.

The firm's records, with respect to such work, reveal—consistently with NWA's prior declarations—that "traps" delivered for cleaning during March 1979 had declined in number significantly. Respondent had received some on March 6 and 9; the last of these had been returned by Monday, March 19.[44]

By Wednesday, March 21, Respondent retained no Northwest Alloys traps, previously delivered, which required its trap cleaning crew's services. Under these circumstances, the fact that Galvin, Ross, and Yardley were laid off concurrently with the Union's election victory, though certainly an arresting coincidence, can hardly be considered suggestive of some statutorily proscribed motivation.

Second, the General counsel contends that Respondent's proclaimed rationale for these challenged layoffs—that the trap "cleaning" crew's "occupational function" had been "absorbed" or "taken over" by another company—should be considered false, therefore pretextual, and consequently suggestive of the firm's hidden, statutorily forbidden, motive. I have not been persuaded. Northwest Alloys had concededly notified Respondent—some time previously—that it would eventually undertake to clean its slag clogged traps and related plant equipment itself.[45]

Therefore, when trap deliveries declined to the point where they had seemingly been suspended, Respondent's management could reasonably conclude, within my view, that NWA's previously proclaimed "phase out" program was being implemented, and that Respondent's trap cleaning services might no longer be required.[46]

Though Galvin, Ross, and Yardley received termination notices which failed to designate them as eligible for rehire, they were concededly told that they were eligible and that, in fact, Respondent would be legally bound to communicate with them, relative to their recall, before hiring replacements. Such commitments, within my view, cannot be reconciled with the General Counsel's contention that Respondent's layoff decision with respect to Galvin, Ross, and Yardley reflected a determination to dispense with their services for statutorily proscribed reasons.

Third, the General Counsel suggests that—when General Manager Hillyer offered Yardley recall—the fact that he did so after he had queried the trap cleaner regarding his "political ambitions" generally, and had been told responsively, by Yardley, that he was not a union

[43] Layoffs *directly* following *some concerned employer's receipt of notice* regarding a labor organization's representation claim have, most frequently, been considered—absent some persuasive showing in rebuttal which would warrant a contrary conclusion—discriminatorily motivated. Similarly, layoffs effectuated during a labor *organization's campaign* for representative status—which might conceivably influence forthcoming vote's result—have frequently been found, absent some persuasive showing of justification, violative of the statute's mandate. Layoffs *following a labor organization's confirmed ballot box victory*, however, can hardly be considered, on their face, calculated to promote some statutorily proscribed objective; some further showing, persuasively revelatory of the concerned employer's forbidden motive, would seem required.

[44] The record warrants a determination that Respondent had billed NWA, for March trap "cleaning" work, on the last designated date; the traps, however, may conceivably have been cleaned and physically "returned" prior thereto.

[45] Whether it proposed to perform such trap "cleaning" work within its local magnesium reduction plant, or within some facility located elsewhere, cannot be determined from the present record.

[46] Though Northwest Alloy's representatives, so far as the record shows, had never told Respondent's management, prior to March 21, that the firm would not, thereafter, be given any more traps to clean, General Manager Hillyer could, so I find, reasonably draw that conclusion; his failure to seek verification with respect to such a deduction, though possibly subject to criticism when considered with the benefits of hindsight, can hardly support a determination that he was *consciously and deliberately*, seeking a pretext which would justify layoffs.

member and had never been one prior thereto, provides collateral support, retrospectively, for a determination that Yardley's prior March 21 layoff had been motivated by antiunion considerations. This suggestion, within my view, merits rejection; it reflects a possible misconstruction of the record. Despite Yardley's testimony, the record, considered in totality, will not warrant a determination, beyond peradventure of doubt, that he was not invited to resume work until after he had disclaimed current or prior union membership.[47]

Previously, within this Decision, I have found Hillyer's possible references to Yardley's "politics" sufficiently equivocal to preclude a determination that they constituted statutorily proscribed interrogation. I now find further that Yardley's purported response, based on his presumptive construction of Hillyer's query, did not merely convey disclaimer of union membership; according to Yardley, he likewise told Hillyer that he would support the tradesmen in which direction they would go hereafter. In short, the trap cleaner's remarks—were I to presume, *arguendo*, that they have been correctly reported—clearly revealed his readiness to endorse the decision of his former fellow workers with respect to union representation. Recall offers, presented under such circumstances, can hardly be considered *post hoc* evidence that prior layoffs had been discriminatorily motivated.

Fourth, the General Counsel contends that Hillyer's discursive March 26 litany—purportedly compounded of complaints, confessed statutory violations, declarations of disappointment directed to Ross particularly, and threats to report the former trap cleaner's union sympathies to prospective employers—reveals his persistent antiunion bias and should be considered "evidence" that Respondent's March 21 layoffs had been generated by statutorily proscribed considerations. However, previously herein, I have found Ross' testimonial recitals, with respect to what Respondent's general manager purportedly said, unworthy of full faith and credit. I now find further that the former trap cleaner's testimony will not support a determination, retrospectively, that his crew's March 21 layoff had been discriminatorily motivated.

Fifth, the General Counsel would have this Board note that Respondent's management, during previous slack periods when there were no traps to clean, had assigned other work to the trap cleaning crew. The record, however, provides no testimonial or documentary proof that such practice had been uniformly followed. Yardley had once been laid off for some undeterminate period. Ross had likewise been laid off for at least one February day. Galvin had worked several short weeks. With matters in this posture, the General Counsel's suggestion—that Respondent's March 21 crew layoffs reflected a departure from management's past practice, sufficiently significant to support a determination that the layoffs derived from a purpose to discriminate, bottomed on statutorily proscribed considerations—carries no persuasion.

The March 21 layoffs of Galvin, Ross, and Yardley, I find, cannot be considered, upon this record, discriminatorily motivated.

With respect to the General Counsel's contention that Section 8(a)(1) and (3) was likewise violated when Respondent converted the trap cleaning crew's layoffs into terminations, little need be said. Having found that Galvin, Ross, and Yardley were not laid off discriminatorily, I conclude that their March 28 terminations cannot be considered a continuation or reaffirmation of prior discrimination statutorily proscribed. The General Counsel has not, however, charged Respondent with renewed discrimination bottomed specifically upon their concerted effort to procure trap cleaning commitments from Northwest Alloys. Their course of conduct was testimonially canvassed; Respondent's reaction was, likewise, detailed for the record. Respondent was never given timely notice, however, that the General Counsel considered the March 28 terminations of Galvin, Ross, and Yardley independently violative of the statute. This being so, no conclusions with respect thereto, within my view, would be warranted.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's business operations described in section I, above, to have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States. Absent correction, such conduct would tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

In view of these findings of fact, and upon the entire record in this case,[48] I make the following:

CONCLUSIONS OF LAW

1. Respondent Addy Mechanical Fabricators and Constructors, Inc., is an employer within the meaning of Section 2(2) of the Act engaged in commerce and business activities which affect commerce within the meaning of Section 2(6) and (7) of the Act, as amended.

2. Local No. 242, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act, as amended, which admits certain of Respondent's employees to membership.

3. Respondent's general manager—when he questioned employees with regard to their union activities and those of their fellow workers; when he threatened some of them with a possible plant closure and mass discharge; and when he notified some of them that two of their fellow workers had been terminated because of their suspected union activity or sympathies—interfered with, restrained, and coerced Respondent's employees with respect to their excercise of rights statutorily guaranteed.

[47] Hillyer testified that, when they met, he had queried Yardley, *straightaway*, with respect to whether he wanted to come back to work. Though he conceded that he had, theretofore, regularly chivied Yardley about his "politics" every time they met, he proffered a version, distinctly different from Yardley's, with respect to their March 22 highway conversation. Yardley, while a witness, concededly voluntarily that he could not recall Hillyer's precise words.

[48] The corrections in the transcript are hereby noted and corrected.

Thereby, Respondent has engaged in, and continues to engage in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act, as amended.

4. Respondent's general manager, when he terminated Jose Fierro and Duane Decker and thereafter failed or refused to reinstate them, discriminated against them with respect to their hire and tenure of employment, and further interfered with, restrained, and coerced Respondent's employees, generally, with respect to their exercise of rights statuorily guaranteed. Thereby, Respondent has engaged in, and continues to engage in, unfair labor practices affecting commerce, within the meaning of Section 8(a)(3) and (1), and Section 2(6) and (7) of the Act, as amended.

5. The General Counsel has failed to establish, by a preponderance of reliable, probative evidence, that Respondent has otherwise committed cognizable unfair labor practices within the meaning of the statute.

REMEDY

Since I have found that Respondent Addy Mechanical Fabricators and Constructors, Inc., has committed, and has thus far failed to remedy certain specific unfair labor practices which affect commerce, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action, including the posting of appropriate notices, designed to effectuate the policies of the Act, as amended.

Specifically, I have found that Section 8(a)(3) and (1) of the statute was violated when Respondent's general manager discharged Jose Fierro and Duane Decker for statutorily proscribed reasons. I shall, therefore, recommend that Respondent be required to offer Fierro and Decker immediate and full reinstatement to their former positions or, should those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges. Respondent should further be required to make Fierro and Decker whole for any pay losses which they may have suffered, or may suffer, by reason of the discrimination practiced against them, by the payment of sums of money equal to the amounts which each of them would normally have earned as wages, from the dates of their successive discriminatory terminations, herein found, to the date or dates on which Respondent offers them reinstatement, less their separately computed net earnings during the period designated. Whatever backpay Fierro and Decker may be entitled to claim should be computed by calendar quarters, pursuant to the formula which this Board now uses. *F. W. Woolworth Company*, 90 NLRB 289, 291-296. Interest thereon should likewise be paid, computed in the manner prescribed in *Florida Steel Corporation* 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), in this connection.

Upon the foregoing findings of fact, conclusions of law, and the entire record, I hereby issue pursuant to Section 10(c) of the Act, as amended, the following recommended:

ORDER[49]

The Respondent, Addy Mechanical Fabricators and Constructors, Inc., Addy, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging workmen or discriminating in any other manner with regard to their hire or tenure of employment or their terms and conditions of employment, because of their known or suspected participation in some Union's campaign for representative status or because of their participation in other concerted activities for the purpose of collective bargaining, or other mutual aid or protection.

(b) Interfering with, restraining, or coercing employees—through questions, statements, or conduct comparable with those found violative of law, previously, within this Decision or in any other manner—with respect to their exercise of rights which Section 7 of the statute guarantees.

2. Take the following affirmative action which will effectuate the policies of the Act, as amended:

(a) Offer Jose Fierro and Duane Decker reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, and make them whole for any pay losses which they may have suffered because of the discrimination practiced against them in the manner and to the extent set forth within the "Remedy" section of this Decision.

(b) Preserve, until compliance with any order for backpay made by the Board in this proceeding, and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records relevant and necessary to reach a determination with respect to the amount of backpay due pursuant to this Order.

(c) Post at Respondent's shop facility in or near Addy, Washington, copies of the notice marked "Appendix."[50] Copies of said notice, on forms provided by the Regional Director for Region 19, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consective days thereafter, in conspicuous places, after being duly signed by Respondent's representative, including all places where notices to Respondent's shop and field employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) File with the Regional Director for Region 19, as the Board's agent, within 20 days from the date of this Order, a written statement setting forth the steps which Respondent has taken to comply herewith.

[49] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections hereto shall be deemed waived for all purposes.

[50] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."